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HOUSEHOLD GOODS TRANSPORTATION AND BUS REGULATORY REFORM OVERSIGHT

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HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 AND THE BUS REGULATORY REFORM ACT OF 1982

OCTOBER 21, 1985

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OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 AND THE BUS REGULATORY REFORM ACT OF 1982

MONDAY, OCTOBER 21, 1985

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Surface Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:27 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member; Steve Palmer, minority professional staff member; and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator Packwood. The committee will come to order.

We are continuing on with our hearings involving both the household goods industry and the bus industry. As far as I am concerned, the steps we have made so far in the past in both of these industries have worked out relatively well.

As a matter of fact, all things considered financially the household goods industry has not done quite as badly as the trucking industry overall, and I think that but for deregulation and the offers they have been able to make and the very effective pricing they have been able to do, imaginative pricing by and large, I think they would have been worse off or not any better off but for the partial deregulation.

We have almost totally deregulated buses, and I know there have been some complaints, but not many by and large, not many from the small towns that have lost some service—although I think all of our States have had some—not many from the bus companies themselves. Certainly I can tell from going home to my Rotaries and Kiwanis and Lions very little complaint from the average citizen in the State.

It requires some more fine tuning. That is why we are here today. But I think we have moved in the right direction.

Before I call on the chairman to speak and introduce who he has with him, I would like to call on Senator Pressler for an opening statement.

OPENING STATEMENT BY SENATOR PRESSLER

Senator Pressler. Mr. Chairman, thank you very much.

While we are examining the impact of two different deregulation acts today, I would like to direct my comments to the Bus Regulatory Reform Act of 1982. Prior to the passage of the Bus Act, a detailed study conducted for the committee concluded that "service to small towns seems no more threatened than that to large cities. In fact, based upon the available financial data, it appears that the industry is healthier in rural areas than highly urbanized areas."

Personally, I have some doubts as to whether that prediction has been borne out by events of the past 3 years. An ICC survey of bus companies after only 11 months of deregulation found that 1,294 locations were reported as having been dropped or proposed to be dropped from intercity routes. That is almost 10 percent of all the communities directly served by intercity buses at the time of deregulation.

Of these 1,294 locations, 776 lost all of their intercity service. The vast majority of those communities have less than 10,000 residents. In less than 1 year, almost 1 million people lost their bus service.

The Department of Transportation conducted a study of 12 States, including South Dakota, to determine the effects of deregulation between 1982 and 1984. That study found that since deregulation the trend toward termination has accelerated from its historical levels.

For example, between 1975 and 1982, the number of communities receiving bus service declined at an annual rate of 3.3 percent. In the 2 years following enactment of the Bus Act, that rate has tripled; three times as many communities are losing intercity bus service now than before deregulation. Prior to deregulation, the average number of service terminations to communities was 147 per year; since deregulation, that rate has increased over 200 percent, to over 300 terminations per year.

A figure that makes an even more telling statement of the effect of deregulation is the ratio of service terminations to service initiations. The proponents of deregulation claimed that reducing entry barriers as well as exit barriers would be in the public interest. While it does not appear to have worked out that way, the DOT study found that before deregulation service terminations outnumbered service initiations almost 4 to 1. Since 1982, however, that figure has more than doubled. Specifically, for every community that receives new service, 8.6 communities lose their service.

As I have indicated, the study prepared by the Department of Transportation examined the first 2 years of deregulation. What has happened in the third year has not been fully documented at this time, but I suspect there has been a continuation of these more recent accelerated trends of abandonments and reductions in service.

For example, in my home State of South Dakota just this past week one of our bus companies decided to terminate service to almost 30 communities, affecting almost 25,000 South Dakota residents. We also have abandonment proposals already pending in several major communities in western South Dakota.

The bottom line is that bus deregulation has hurt rural States such as South Dakota. Given the findings of the DOT and the ICC studies and more recent developments, I will be interested to hear how the witnesses evaluate the effects of deregulation, and I would ask them to couch some of their remarks in view of these studies.

Before we get to that, however, I want to comment on another problem regarding the bus industry. This is a problem that is indirectly related to deregulation but nonetheless is an issue that lends itself to discussion in this forum; namely, the issue of liability insurance.

The bus industry is currently facing a crisis being experienced by many different sectors of our economy. For a number of reasons, it is becoming increasingly more difficult for organizations, businesses, governments, and individuals to find adequate liability coverage. Either the coverage has been dropped by the insurer or premiums have increased exhorbitantly or the coverage is only available at reduced rates and higher rates.

This problem has only recently attracted national attention and we in Congress have only tentatively begun to investigate the issue and develop the necessary remedies. There is a very good reason why this problem should be discussed today. The Bus Act calls for intercity bus operators to carry minimum levels of liability insurance in order to maintain or receive a certificate of operation from the ICC. Specifically, carriers who operate vehicles with a capacity of 16 or more passengers are required to carry $5 million of liability insurance.

The act, however, gives the Department of Transportation the authority to reduce the minimum level to $2.5 million for the first 2 years of deregulation. The Department chose to exercise that authority, but on November 19 the minimum level of liability insurance bus operators will be required to carry will be $5 million.

Given the current crisis regarding liability insurance, I am concerned about the possible effect that increased liability levels will have on future service. It strikes me as though smaller operators and carriers that serve rural communities will suffer the most under these circumstances. In turn, it is the residents of these communities who will ultimately bear the brunt of higher insurance premiums either in the form of higher fares or reduced or terminated service.

I am not suggesting that the $5 million liability requirement be waived or reduced in any form. It is imperative that intercity carriers be adequately insured. What I hope this hearing will accomplish, however, will be to heighten the awareness of my colleagues on the committee and the representatives of industry here today of the magnitude of this problem. I also hope the parties involved in the bus industry will help us develop some ideas on what can be done to address this insurance problem.

Mr. Chairman, before concluding, I would like to read the list of communities that will lose all or part of their service within the next several months in my State: Jackrabbit routes between Pierre and Redfield, Onida, Agar, Gettysburg, Lebanon, Corner, Seneca, Faulkton, Rockham, Mizel, and Redfield.

Between Redfield and Watertown, the cities of Doland, Clark, Henry, Coons Corner, and Watertown. The area between Watertown, Arlington, and Madison: Coleman, Wentworth, Madison, Arlington, which leads into Watertown. Between Mitchell and Sioux

City, Iowa: Mitchell, Parkston, Tripp, Scotland, Tabor, and Yankton, partial loss of service.

In the western part of our State the Trailways routes between Rapid City, leading into Denver, but in the cities in South Dakota, Rapid City, Hill City, Custer, Pringle, Hot Springs, Edgemont. Some of these are reduced service—Rapid City and Hot Springs.

The point I'm making, these are vivid living examples of service being reduced or lost, and it is a severe blow to our State.

Senator **Packwood**. Let me announce to the witnesses today that we are going to operate under our normal time limit. The Cabinet secretaries or chairmen of significant regulatory agencies we do not hold to our 5-minute rule, but everyone else we will. Your statements will be in the record in full and we would appreciate you making an oral presentation of your main points.

Mr. Chairman, go right ahead.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY RONALD YOUNG, DIRECTOR, BUREAU OF ACCOUNTS; WILLIAM SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS; HOWELL SPORN, DIRECTOR, MOTOR SECTION, OFFICE OF PROCEEDINGS; AND BERNARD GAILLARD, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. **Taylor**. Thank you, sir. We appreciate this opportunity to be before you today to testify with regard to the Commission's implementation of the Bus Regulatory Reform Act of 1982 and the Household Goods Transportation Act of 1980 and their impact upon the industries involved and others affected by the legislation.

I would like to begin by discussing the Bus Act. In the entry area, we are pleased to report that the Act has had a significant effect. Major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized the new opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low start-up or capital costs, through the entry of new firms and territorial expansion by existing firms.

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although fare increases have occurred on certain routes, carriers have also responded to the more competitive market created by the Bus Act by filing a number of independent rate actions and initiating some innovative discount programs.

One of the initial concerns with the bus regulatory reform legislation was the effect that it might have on service to small communities. Of course, since passage of the Bus Act, Greyhound and Trailways have proposed to drop, or have dropped, various points from their intrastate route systems, which was an expected result, because one of the aims, frankly, of the act was to enable carriers to rationalize their route structures. However, in the case of smaller carriers, it appears that few are dropping service to points they have been serving, and it also appears that the demand for regularly-scheduled intercity bus service in rural and small communities is small and has been declining for a number of years.

One issue that has arisen in the entry area concerns applications by government-subsidized carriers to operate charter and special services. These carriers may not claim the advantage of the fitness-only burden of proof normally applicably to privately-owned bus lines seeking the same authority. Rather, these applications may be denied if it is found that the proposed service is not consistent with the public interest.

Mr. Chairman, let me point out as an aside that the Commission has made, I think, a serious effort to define the public interest test or standard as it relates to subsidized carriers. In our decisions, we have considered the scope of the application, the nature and extent of the Government subsidy, and the potential harm to competing, privately-funded carriers, especially if they are providing regular route service.

Let me touch briefly on several other matters related to the impact of the Bus Act. The bus industry did not fare well during the recession. However, even though the improving economy and passage of the Bus Act have not yet reversed declining ridership and earnings, we think the effects of the recession would have been more severe without the reforms included in the Act.

Under section 26 of the Act, the Commission conducted a study and submitted a report in conjunction with the U.S. Department of Transportation on intercity bus terminals and stations. It was found that both Greyhound and Trailways, as well as many smaller carriers, are selective about which new carriers are permitted access to their terminals.

However, carriers denied access to existing terminals have alternatives available which require the incursion of only minimal nonrecoverable costs. Consequently, we found that the pattern of bus facility ownership and control does not compromise public access to an effective and competitive bus industry.

Over the past 6 months, the Commission has received a steadily increasing number of inquiries from motor carriers of passengers who indicate problems with public liability insurance. As a result of this crisis, the United Bus Owners of America, UBOA, filed a special tariff application which asked the Commission to give association members authority to file tariffs containing surcharges to offset insurance costs on 10 days notice, instead of the usual 30 days notice. The Commission granted this request and extended the reduced notice period to all motor carriers of passengers in an effort to address this insurance problem.

Additionally, Senator Pressler has mentioned that the insurance requirements for bus carriers increase from $2.5 million to $5 million on November 19, 1985. As a result, I have asked OCCA to monitor these higher limits and continue to take whatever actions are appropriate to ensure compliance. Of course, OCCA's staff will welcome the cooperation of the bus industry in helping them identify any operators that appear to be in violation of the new requirements.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before you today to testify with regard to the Commission's implementation of the Bus Regulatory Reform Act of 1982 and its impact on the intercity bus industry and other affected by the legislation. As stated in our testimony at past oversight hearings, we believe that the Bus Act offers a balanced approach by easing entry into new routes, establishing a more certain procedure for exit from unprofitable service, and providing bus companies greater flexibility to price their services. We continue to believe that this approach is the most practical and efficient means available to maintain adequate service, both for the public generally and for the poor, the elderly, the military, and students, who utilize bus service in the greatest numbers.

Let me began the discussion of the effects of implementation of the Bus Act by focusing on three key areas—eased entry, rate flexibility in conjunction with limitations on antitrust immunity, and exit policy.

ENTRY

We are pleased to report that the Act has had a significant effect on entry. It has allowed many existing firms to rationalize route structures and to offer passengers new services at competitive fares in many regular route markets. In the past, expansion was often based on what regulation permitted, rather than a determination as to which route structures would be the more efficient and profitable additions to an existing route system. Under the Bus Act entry standards, major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized this opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low start-up or capital costs, through the entry of new firms and territorial expansion by existing firms. As a result of the significant reduction in entry barriers, the Commission established highly simplified licensing application procedures. These procedures and our implementation of the entry standards have been affirmed recently in court.

From the Act's passage until September 30, 1985, 3,962 applications have been filed by new and existing firms for regular-route and charter authority. Of this total, 2,578 have been filed by new applicants (65 percent) and 1,384 by existing carriers. Thus, it is clear that the entry provisions of the Bus Act are having their intended effect. Approximately 520 of these applications have been for regular-route authority, which represents about 13 percent of all applications for permanent passenger authority over this period.

Most of the regular-route applications seek intrastate authority as well as interstate authority over the requested routes. One of the most significant reforms of the Bus Act is the provision allowing the Commission to preempt State jurisdiction over interstate-authorized regular routes. A carrier thereby is able to pick up and discharge passengers freely along is routes in regular-route service without State interference. However, several issues regarding these grants of intrastate authority have arisen which are not addressed specifically by the statute. One is the extent to which a carrier must actually perform both interstate and intrastate operations over such a route, of at all. Another is whether the intrastate authority conferred by the Commission allows the carrier to conduct an independent intrastate operation entirely within a municipality. These issues are currently under consideration in proceedings pending before the Commission.

In the area of charter and tour services, low entry costs, as already indicated, have induced many new entrants to take advantage of the Bus Act. Since the effective date of the Act, more than 3,305 charter applications have been received, and it appears that more than half have been from first-time applicants.

Another issue that has arisen in the entry area concerns applications by government-subsidized carriers to operate charter and special services. These carriers may not claim the advantage of the "fitness only" burden of proof normally applicable to privately owned bus lines seeking the same authority. Rather, these applications may be denied if it is found that the proposed service is not consistent with the public interest. The American Bus Association requested consolidation of several applications by these subsidized carriers, contending that it is inconsistent with the public interest to grant charter and special operations authority to any applicant that can use its subsidized position to mount potentially unfair competition against carriers operating in private enterprise. The Commission has determined, however, that each such application should be considered separately and has issued decisions in five of these "public interest" applications for charter and special operations, granting two in their entirety, granting one in part, and denying two. Decisions in the two other pending applications should be issued in the near future.

RATES

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although the major carriers have established a number of discount programs, fare increases have also occurred on certain routes as the industry struggles to overcome its generally weakened financial condition resulting from the 1982 recession. For example, certain carriers, including Greyhound, elected to take advantage of the zone of ratemaking freedom established by the Bus Act and increased their fares by 2 percent in January 1983. Responding to the more competitive market created by the Bus Act, however, carriers have also filed a number of independent rate actions. The majority of these independent rates have been filed by carrier members of the National Trailways Bus System and Greyhound.

With regard to the rate bureau provisions of the Act, as reported in last year's testimony, the Commission established revised standards and procedures for the bus industry rate bureau in Ex Parte No. 297 (Sub-No. 6). The National Bus Traffic Association has filed an amended agreement in conformity with the Commission's rules. Subsequently, comments and a reply by NBTA were filed. The Commission now has reviewed the amended agreement and a decision should be issued shortly. In this regard, it should be noted that the provisions of the Act which further define the scope of antitrust immunity are largely self-executing, and the bureau and its member carriers must comply with the provisions of the Bus Act while the amended agreement is being considered.

The Commission has testified before this Subcommittee that we see no need for continued antitrust immunity for the collective determination of general rate changes, innovative fare changes, or broad changes in the tariff structure of motor common carriers of passengers. This continues to be our view, and we agree with the recommendation of the Motor Carrier Ratemaking Study Commission that this antitrust immunity should be eliminated.

As you know, Section 17 of the Bus Act gave the Commission authority to review intrastate rates of interstate motor common carriers of passengers. The Commission has received 62 petitions for such review since the Act became effective. These petitions have involved 24 States and 13 bus companies; 29 of the petitions were filed by Greyhound and at least 14 by members of the Trailways System. Fifty-nine have been granted—generally on the basis that the carrier's existing intrastate fares are lower (often significantly lower) than its interstate fares for comparable service within the State without valid justification for the disparity, and therefore, such intrastate fares impose an unreasonable burden on interstate commerce. Two of the petitions have been dismissed on grounds of lack of Commission jurisdiction. One petition remains pending as of this date. Appeals in the form of petitions for reopening have been filed in seven of the proceedings; all seven of those petitions have been denied. Also, ten of the proceedings have been the subject of court actions. Six of these cases have been dismissed; one has been reopened, subject to court approval, to correct a misstatement of fact, two have been remanded by the court in order for the Commission to consider in its analysis the excursion fares offered by the carriers; and one case has been reopened on the Commission's own motion for receipt of additional evidence on the excursion fare issue. Finally, in response to a carrier's motion, the Commission extended the statutory deadline for Commission action and reopened the record for receipt of additional evidence on the excursion fare issue. A list of these intrastate rate cases and their status is attached to our statement (Appendix I).[1]

EXIT

One of the major concerns with regulatory reform legislation involving any mode of transportation has been the effect on service to small communities. In most small communities, buses represent the only form of public passenger transportation available. Nevertheless, studies indicate that the demand for regularly scheduled intercity bus service in rural and small communities is small and has been declining for a number of years. In the decade before passage of the Bus Act, it is estimated that approximately 1800 communities lost all intercity bus service.

Since enactment of the Bus Act, Greyhound and Trailways have proposed to drop or have dropped numerous points from their intrastate route system. In the case of smaller carriers, however, it appears that few are dropping service to points they have been serving. The discontinuances that have occurred were, for the most part, an expected and intended result of the Bus Act, since one of the aims of the Act is to provide carriers both greater entry and exit freedoms so they can best reorganize and rationalize their route structures.

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[1] The appendices are in the Committee files.

Citing deregulation of airlines and ensuing decreased bus ridership and operating losses, this past spring Greyhound announced a plan to reduce its passenger operations. Under the plan, Greyhound proposed to cancel some additional routes, to expand its franchising program (established in January), to subcontract operations or sell some terminals, and to reduce the number of managerial and unionized employees. As part of this process, Greyhound has begun to emphasize bus service from rural and suburban points to airports, in recognition of the increasing dominance of traditional bus markets by the discount, regional airlines. Since this announced restructuring began, the number of intrastate bus exit appeals filed at the ICC by Greyhound has not increased drastically, nor have complaints of lost service risen. As was the case in a majority of discontinuances approved by the Commission in 1983 and 1984, the discontinued service is along corridors where there is some other form of available public transportation service. Nonetheless, the Commission has and will continue to closely monitor the situation.

In the past, bus carriers have been prevented by State regulatory authorities from discontinuing many routes which were severely under-utilized and, therefore, unprofitable. In order to address this problem, the Bus Act provided statutory authority for the Commission to preempt State regulation of exit from regular-route passenger service in certain circumstances. The Commission has received 46 petitions for intrastate exit review since the Act became effective. Each involves intrastate transportation being provided on a route over which the carrier was granted authority to provide interstate transportation on or before August 1, 1982. In such instances, the Bus Act requires the Commission to grant a petition for discontinuance unless it finds, on the basis of evidence presented by those objecting, that such discontinuance is not consistent with the public interest or that continuing the transportation will not constitute an unreasonable burden on interstate commerce. The Commission has taken final action in 42 cases: 38 petitions have been granted, one has been granted in part, two have been dismissed for lack of jurisdiction, and one has been dismissed as moot.

One of the granted petitions was denied initially and subsequently reversed upon consideration of a discretionary appeal filed by the carrier. Six of the petitions have been unopposed; however, in one case the State involved appealed the unopposed grant on the ground that the underlying discontinuance request had been improperly filed at the State level. This appeal was denied. Two other discretionary appeals from decisions granting petitions have been denied. The remaining four exit petitions are pending final action by the Commission. In one, the Commission has held open the proceeding for submission of additional evidence on the impact of a recently granted intrastate fare increase on the operations proposed to be discontinued. A list of all intrastate exit cases and their status is attached to this statement (Appendix II).

OTHER ISSUES

In discussing the effects of the Bus Regulatory Reform Act, another factor to be examined is the financial condition of the industry. The bus industry did not fare well during the recession. In 1982, net income of Class I carriers fell to its lowest level since 1960. As you know, concern over the industry's financial condition was one of the factors which led to passage of the Bus Act. The recovery has not yet improved carrier profitability.

The most recent report issued by the Commission concerning the financial condition of the bus industry compares the earnings of 20 of the largest intercity bus companies for the second quarter and twelve months ending June 30, 1985, with the corresponding periods of 1984. This report shows that the total operating revenue and ridership of the 20 carriers declined during the second quarter of 1985, compared to the same period of 1984. For the twelve-month period ending June 30, 1985, operating revenues decreased .9 percent, as revenue passengers carried declined 4.2 percent. The report shows that operating revenues and earnings of Greyhound Lines for this period significantly improved, compared to the substantialy depressed results of the twelve months ending June 30, 1984, when a strike curtailed the company's operations. A copy of a summary of the Commission's report on the earnings of the 20 largest bus companies for the second quarter of 1985 and the twelve months ending June 30, 1985, is attached (Appendix III).

In order to assess the impact of the Bus Act on the industry's financial condition, the Commission has prepared information comparing selected financial and operating data of the ten largest bus companies with 15 large independent bus companies for the years 1981 through 1984. Graphs which illustrate this information have been submitted for the Committee's hearing record. This information shows the continuing downward trend of decreased earnings and ridership that the bus industry has been experiencing.

Net income for the ten largest bus companies declined substantially between 1981 and 1983, from $43 million in 1981 to $25.3 million in 1982 to $7.8 million in 1983. Earnings of Greyhound Lines, Inc., the nation's largest bus company, were adversely affected in 1983 by a strike which curtailed its operations during the fourth quarter. Net income of the ten largest bus companies rose to $27.8 million in 1984, still considerably below 1981 levels, as Greyhound reported a significant improvement in earnings over strike-impacted 1983. Net income of the 15 large independent carriers declined each year from 1981 ($10.8 million) to 1984 ($5.2 million).

Revenue passengers carried declined each year for the ten largest bus companies (a total of about 25 percent between 1981 and 1984) and for the 15 large independents (about 4 percent between 1981 and 1984). Ridership of the ten largest carriers for 1984 declined 6.4 percent from the depressed operating levels of 1983 when Greyhound was adversely affected by a strike during the fourth quarter.

Although the improvement in the nation's economy and passage of the Bus Regulatory Reform Act of 1982 have not arrested the decline in bus industry ridership and earnings, the effects of the recession would have been more severe without the reforms included in the Bus Act. Increased automobile usage, due to the economic recovery and stable gasoline prices, and some substantially discounted air fares have contributed to the decline in bus ridership. In addition, the 1983 strike at Greyhound adversely affected the summary statistics of the industry.

As part of its efforts to further reduce the regulatory burden on passenger carriers, the Commission has instituted a rulemaking proceeding which would simplify financial reporting requirements for bus companies.[2] Comments on the proposal are due to be filed by December 9, 1985.

Efforts to assist small carriers and local governments in consummating new service or searching for alternatives to lost passenger bus service have continued at the Commission. Several publications prepared by the Small Business Assistance Office (SBAO) and Office of Special Counsel were updated this past year and are still available to the public. These booklets provide explanations on how to obtain interstate authority as well as how to participate in Commission proceedings. The Commission responded to numerous inquiries received from State and local government officials, users of bus service, and persons interested in beginning new or expanding existing passenger bus operations. Such inquiries are received on a daily basis by the Commission, with staff furnishing individual counseling regarding passenger operations. The SBAO also began contacting all parties in bus exit cases to offer advice on finding replacement for lost service or determining alternatives to discontinued regular-route bus service. While none of SBAO's efforts have resulted in the location of available full-scale replacement service, the Commission has had some success in directing community leaders interested in assuring the availability of some form of public transportation.

Under Section 26 of the Act, the Commission conducted a study and submitted a report with the U.S. Department of Transportation on intercity bus terminals and stations. Recognizing that the Greyhound and Trailways systems control many bus terminals, attention was focused on how this would impact on public access to an effective and competitive bus industry in a deregulated environment. After developing an inventory of bus facilities to determine the pattern of ownership, location, and adequacy of the overall terminal system, the pattern of terminal control was analyzed to assess its impact on competition in the bus industry.

It was found that both Greyhound and Trailways, as well as many smaller carriers, are selective about which new carriers are permitted access to their terminals. However, carriers denied access to existing terminals have alternatives available which require minimal nonrecoverable costs. Many existing structures can easily be converted to small bus terminals due to the relatively simple requirements of a terminal structure and its location. In many cases, commission agency stations may be reasonable substitutes for terminals. Also, public transit stations, Amtrak terminals, public transfer or intermodal terminals are used increasingly by private carriers.

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[2] Docket No. 39953, "Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers," notice of proposed rulemaking served June 26, 1985.

Many carriers reporting access problems have overcome them by taking advantage of these alternatives. Consequently, we found that the pattern of bus facility ownership and control does not compromise public access to an effective and competitive bus industry.

As stated earlier in my testimony, provisions of the bus Regulatory Reform Act have afforded many new opportunities for both users and providers of bus service. Thousands of new motor passenger businesses have arisen since November of 1982, resulting in the availability of a greater variety of services and prices from which bus users may choose. But the precarious situation of the insurance industry presents a very real threat to the continued viability of many interstate passenger operations. As you know, the causes of, and possible solutions for, the problems now being experienced throughout the insurance industry are the subject of ongoing Congressional hearings. My purpose in mentioning the insurance problem is to emphasize the potential widespread, adverse effect this situation could have on motor passenger carrier service.

Over the past six months, the Commission has received a steadily increasing number of inquiries from motor carriers of passengers who indicate problems with public liability insurance. In some instances, carriers are encountering difficulty in securing adequate coverage; in others, they are experiencing astronomical increases in premiums. Likewise, the number of insurance cancellation notices and subsequent ICC warning letters has risen dramatically. The number of voluntary requests for revocation of authority has also been increasing, with insurance coverage cited as the reason for discontinuance of operations. The Commission has asked the office of Compliance and Consumer Assistance to continue to analyze why these increases have occurred and determine what can be done to alleviate the insurance problem confronting the motor carrier industry.

As a result of this crisis, the United Bus Owners of America (UBOA) filed a special tariff application asking the Commission to give its members authority to file tariffs containing surcharges to offset insurance costs on 10 days' notice instead of the usual 30 days' notice. In its pleading, UBOA, which represents approximately 2,200 passenger carriers, stated that the average increase in the cost of insurance for its members from 1984 to 1985 was about 700 percent. The Commission granted this request in a decision served October 2, 1985, and extended the reduced notice period to all motor carriers of passengers for the filing of independent action surcharges for the purpose of offsetting increased insurance costs.[3]

CONCLUSION

I would like to conclude by emphasizing that the Commission has moved forward to implement the Bus Regulatory Reform Act, keeping in mind the Congressional findings which emphasize that the objectives of the National Transportation Policy can best be met through greater competition and reduced regulation. Clearly, a more competitive environment has already developed in the bus industry, which is now responding positively to the operational freedoms provided for in the Act by affording bus passengers improved price and service options.

This concludes my statement, and now I'll be glad to respond to any questions you may have.

Mr. TAYLOR. Turning to the Household Goods Transportation Act of 1980, as we have testified previously we believe that the impact of the legislation has been positive. It is precisely our experience in implementing this Act and the Motor Carrier Act of 1980 that leads us to conclude that further motor carrier deregulation is warranted. The Commission's Office of Transportation Analysis has designed a study to determine the impact of the Household Goods Act and the Motor Carrier Act on shippers and carriers of household goods.

Although this study is not yet complete, OTA has been able to provide a preliminary assessment of the data collected for the study. These preliminary study results indicate that 10 percent of the 2,626 carriers with household goods authority received their initial operating authority after 1980.

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[3] Special Tariff Authority No. 85-2490, "Insurance Surcharge for Bus Companies."

With regard to carrier flexibility in the pricing of service, the wide variety of new price and service options which have emerged give ample testimony that this objective has in fact been achieved. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts. Binding estimates, which got off to a slow start, are now offered by a number of household goods carriers.

The offering of guaranteed service dates and liquidated damages to the shipper in the event of delayed service is now a common practice, and all of the major carriers are offering what is generally referred to as full value liability protection, which is an added option offered at an additional charge that allows the shipper to be compensated on the basis of replacement cost.

Also, there has been a dramatic decrease in the number of complaints filed against household goods carriers since passage of the act. In fiscal year 1981, there were 11,741 complaints filed, but only 3,827 complaints were received in fiscal year 1985—a dramatic decrease.

The Motor Carrier Act and Household Goods Act of 1980 were enacted about the same time that the economy went into a severe recession. As a result, it is difficult to determine the precise effect of the Acts on the financial condition of the industry. However, available information indicates that in general: (1) household goods carriers fared much better during the recession than did other motor carriers of property; (2) household goods carriers rebounded rapidly from the recession and have continued to improve; and (3) none of the largest household goods carriers has gone bankrupt, nor are there indications that a large number of small household goods carriers have gone out of business.

In the past, we have mentioned the development of a significant trend toward the use of contracts by household goods moving companies. This trend is continuing and may accelerate as a result of several recent Commission decisions. There has also been an increase in the number of individual companies participating in approved pooling agreements. As a result, participants are able to compete more effectively with the pricing practices of the larger carriers.

In conclusion, it is clear that a more competitive environment has already developed in the bus industry, as evidenced by the fact that passengers are now afforded a variety of improved pricing and service options. Similarly, it appears that the household goods industry and the public it serves have both benefitted from the provisions of the Household Goods Act.

That concludes my summary remarks, Mr. Chairman, and I would be glad to respond to any questions that you might have.

[The statement follows:]

Statement of Hon. Reese H. Taylor, Jr., Chairman, Interstate Commerce Commission

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission on the Household Goods Transportation Act of 1980 (the Act). As we have testified previously, we believe that the impact of the Act has been positive, and that substantial progress has been made in terms of fulfilling the purpose of Congress in enacting this legislation.

That purpose, as set forth in the Declaration of Policy, was threefold: (1) reducing unnecessary regulation; (2) strengthening consumer remedies and protections; and (3) establishing maximum carrier flexibility in pricing of service and meeting the needs of shippers. Today, we are reporting on the actions the Commission has undertaken to carry out these legislative objectives, and on the impact of the Act on shippers and the household goods industry. We will also comment on present trends and possible further developments in this industry.

At your annual motor carrier oversight hearing, on September 9, 1985, and at your hearing on Economic Deregulation of the Trucking Industry, we once again expressed our strong support for further deregulation of the industry. As we informed this Subcommittee, the motor carrier industry (including household goods carriers) and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980 and the Household Goods Act of 1980. It is precisely our experience in implementing these Acts that leads us to conclude that further motor carrier deregulation is warranted.

ICC IMPLEMENTATION

In accordance with the specific mandate in section 6 of the Act, the Commission promptly reviewed and revised all of its operational regulations for household goods transportation in Ex Parte No., MC-19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations), 132 M.C.C. 599 (1981). These rules became effective February 1, 1982.

Section 6 of the Act also directs the Commission to minimize its regulations and the paperwork required of the carriers to the maximum extent feasible, consistent with the protection of individual shippers. Accordingly, the Commission has eliminated many unnecessary regulations and has substantially reduced paperwork. For example, for most annual performance reports and all notices of agency agreements have been eliminated. Also eliminated was the requirement for filing quarterly reports detailing instances where actual charges for a shipment were either more than 10 percent above or below the initial estimate. To further reduce regulatory burdens, the Commission eliminated 14 financial schedules previously required in the annual reports of Class I and II household goods carriers. Additional carrrier work-hour savings have resulted from the Commission's elimination of requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. It should be stressed that the requirements eliminated are those which we believe will reduce paperwork burdens without jeopardizing consumer protection.

The Commission is continuing its efforts to reduce regulation in implementing the Act. We have reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding for a review of our household goods regulations in light of the experience gained under our current rules. Comments from interested parties have been received on whether any of the present rules are burdensome, unnecesary, inadequate to protect shippers or otherwise inappropriate. These comments and proposed revisions to the regulations are currently under review by the Commission.

In an effort to further reduce the regulatory burden of motor carriers of property, the Commission issued a notice of proposed rulemaking on February 20, 1985, in Docket No. 38904, "Elimination of Accounting and Reporting Requirements for Motor Carriers of Property." This proposal would substantially modify the accounting and reporting reqiuirements for all motor carriers of property, including household goods carriers. Comments from interested parties were due on Octobert 8, 1985, and are now in the review process.

Section 5 of the Act provides that each household goods carrier shall be responsible for all acts or omissions of its agents which relate to services performed for that carrier. Each carrier is to use diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services. The Commission issued a policy statement to remind household carriers that they are responsible for the actions of their agents.

Subsequently, one of the recommendations made by the General Accounting Office (GAO) in its June 10, 1983, report to Congress, entitled "The Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation," was that the Commission periodically evaluate the various carriers' systems or activities to monitor the quality of their agents' service, rather than completely relying on self-regulation by the van lines. In commenting on a draft of the GAO report, the Commission indicated that a specific audit of the programs employed by the carriers to monitor their agents did not appear warranted, considering the substantial decline in complaints, which is discussed later in this statement. However, as the GAO report recognizes,[1] we stated that this facet of carrier operations would be included in our overall household goods monitoring program, and this action has now been taken. Approximately 25 percent of the program is devoted to eliciting information from 44 carriers of varying sizes concerning their monitoring of their agents. Areas involved in the study include the number and capacity of carrier personnel devoted primarily to administering and supervising the agency programs; the quality of carrier instruction in the area of pre-move information; and the extent to which documentary evidence in the carriers' possession demonstrates supervision over the acts and/or omissions of their agents.

The Act provides that, in protecting consumers, the Commission may issue, where appropriate, reasonable performance standards for the transportation of household goods subject to the jurisdiciton of the agency. The Commission proposed such standards in Ex Parte No. MC-19 (Sub-No. 36A). However, on further consideration after reviewing the comments, we determined that the adoption of standards at this time would be contrary to consumer interests, impractical and counterproductive, and that the benefits of performance standards to consumers are outweighed by the costs of compliance. Accordingly, the proceeding was discontunued on December 6, 1983.

Section 7 of the Act allows household goods carriers to establish programs to settle disputes with shippers. Such programs must be approved by the Commission and meet certain statutory requirements. Under the programs, claims would be presented before an impartial arbitrator. Most of the major carriers and many small carriers have given notice of their willingness to participate in dispute resolution programs utilizing arbitration. The Movers' and Warehousemen's Association of America, Inc. and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association—an independent nongovernmental organization. The Commission believes that the implementation and acceptance of settlement dispute programs will result in fewer complaints and less Commission involvement.

With respect to the second goal of Congress, strengthening consumer remedies and protections, the Commission adopted rules requiring that: (1) improved, easy-to-read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer complaint and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers be notified of impending service delays; and (6) carriers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due. As stated earlier, the Commission has reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding to review the need for changes in current rules.

IMPACT OF ACT ON CARRIERS AND SHIPPERS

As we mentioned at the last hearing, the Commission's Office of Transporation analysis (OTA) has designed a study to determine the impact of the Household Goods Act and the Motor Carrier Act on carriers and shippers of households goods. The study utilizes data from the carriers' annual reports and from questionnaires mailed to carriers (of all classes) and shippers. Specific areas of study include: types of operating authority and uses of that authority; pricing policies, such as discounts and contracts; services, such as guaranteed pickups and delivery, full value claim protection and settlement; and carrier financial viability and the industry financial structure.

Although this study is not yet complete, OTA has been able to provide a preliminary assessment of the date collected for the study. These preliminary study results indicate that ten percent of the 2,626 carriers with household goods authority received their initial operating authority after 1980. Approximately 61 percent of the class I, 42 percent of class II, and 30 percent of class III carriers have acquired initial or additional household goods authority since 1980. In addition, a large proportion of household goods carriers have obtained other commodity authority since 1980 (77 percent of class I, 31 percent of class II, and 17 percent of class III carriers).

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[1] See p. 39.

The third legislative objective calls for carrier flexibility in pricing of service. The wide variety of new price and service options which have emerged give ample testimony that this objective has been achieved. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts. Binding estimate programs are offered by a number of household goods carriers. These programs may be used to meet competition and to penetrate new markets, thereby providing discounts to individual C.O.D. shippers as well as corporate accounts.

The questionnaire data collected by OTA underlines the conclusions reported above. One or more of the new pricing plans permitted by the Act (discount rates, contracts, and binding estimates) are being offered by 95 pecent of class I and 77 percent of class II carriers. The considerable activity in the area of discount rates is demonstrated by the fact that 53 percent of class I, 35 percent of class II, and 20 percent of class III carriers reported an increase in independent actions since 1980. Varied service packages are also widely available, since 83 percent of shippers surveyed reported that they were offered a choice of doing some of their own packing and unpacking to reduce costs.

The offering of guaranteed service dates and liquidated damages to the shipper in the event of delayed service is now a common practice. Generally, carriers who offer such guarantees provide for compensation at the rate of $100 to $125 for each day a shipment is delayed in delivery or pickup. Nearly all of the carriers (97 percent) report that they failed to meet the service guarantee on less than five percent of their shipments. Ninety percent of the shippers surveyed stated that they were offered a service guarantee, and of those, 84 percent indicated that the guarantees were met. Carriers are also developing programs designed to improve customer relations, such as offering post-move assistance to families settling in new communities.

All of the major carriers are offering what is generally referred to as full value liability protection. This is an added option, offered at an additional charge, which differs from the manner in which carriers customarily assume liability for loss and damage. Prior to offering this option, the liability of a carrier was generally limited, with respect to each article in a shipment, to a maximum of the actual cash value of each article as of the date the carrier received if for transportation. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement costs, with the result that, if this option is selected, the shipper will be eligible to receive either a new piece of furniture or be paid an amount sufficient to purchase a new piece of furniture to replace the one that was destroyed. OTA's questionnaire data show that 96 percent of shippers surveyed were offered full value liability protection, although only 19 percent said that it was at no additional cost.

In addition to the study conducted by OTA, the Commission's primary source of information, which provides a basis for assessing shipper reaction to the innovations taking place in the transportation of household goods, is shipper complaints. There has been a dramatic decrease in the number of complaints filed against household goods carriers since passage of the Act. In fiscal year 1981, there were 11,741 complaints filed, compared to 6,529 complaints filed in fiscal year 1982—a reduction of about 45 percent. For fiscal year 1983, the sharp reduction continued, with 3,603 complaints filed, a 45 percent reduction from the number received during the prior fiscal year. There was a slight increase for fiscal year 1984, to 4,076 Consumer complaints. Fiscal year 1985 reflects a continuation of the earlier trend with only 3,827 complaints received.

A comparison of the type of complaints received during fiscal year 1984 and 1985 reveals several factors which appear indicative of continuing favorable shipper reaction to the regulatory revisions of the Act. Complaints in fiscal year 1985 involving rates and charges dropped 25 percent to 1,185, from 1,588 in fiscal year 1984. Pricing options, as well as binding estimates, are viewed as contributing to this reduction in consumer dissatisfaction in this area. A major portion of the rates and charges complaints involved cost estimates. During the year, there were 727 such complaints, a 28 percent drop from the 1,014 rates and charges complaints in fiscal year 1984. Complaints involving delays in providing service dropped 15 percent in fiscal year 1985 as compared with fiscal year 1984, i.e., from 707 to 602. The number of complaints involving claims handling by carriers remained at approximately the same level, 1,630 in fiscal year 1984 and 1,652 in fiscal year 1985. The overall reduction in complaints, we believe, is indicative of shipper satisfaction with the improvements and diversity of service made possible by the recent legislation.

Another objective of the Act was to improve the financial condition of the industry. The most recent data released by the Commissioner's Bureau of Accounts show that earnings of the Nation's largest household goods carrier, for the twelve months ending June 30, 1985, declined compared to the same period of the previous year. This report (attachment as Appendix 1) also compares the revenues, earning and traffic volume for the 15 largest household goods carriers for the quarters ending June 30, 1985, and June 30, 1984, showing that although revenues and traffic volume continued to increase, earnings declined during this period.

A comparison of results the twelve months ending June 30, 1985, and June 30, 1984, reveals the following:

Operating revenues rose 9.3 percent.

Revenue tons hauled increased 8.3 percent.

Net carrier operating income decreased 8.7 percent. Large declines were reported by Allied Van Lines and United Van Lines.

Net income decreased 16.7 percent. The decrease in net income was due primarily to large declines reported by Atlas Van Lines and United Van Lines.

Return on shareholder's equity (excluding the value of intangible property) increased slightly to 21.3 percent from 21.06 percent. This increase resulted from a substantial reduction in Atlas Van Lines' net shareholders' equity due to a merger.

In an effort to assess the impact of the Act on the industry's financial condition, the Commission has prepared information showing the composite net income, return on shareholders' equity, operating ratio and revenue tons hauled of 15 of the largest household goods carriers for each of the years 1978 through 1984. The 15 carriers account for approximately 70 percent of the total revenues generated by Class I and II intercity household goods carriers reporting to the Commission.[2] Graphs which illustrate these trends have been submitted for the Subcommittee's hearing-record. These charts and the underlying data indicate the following:

Net income rose substantially each year from 1978 to 1981, declined in recession year 1982, and increased in both 1983 and 1984. Net income in 1984, about $57 million, was the highest during the seven-year period.

Return on shareholders' equity showed a similar trend i.e., increases each year from 1978 through 1981, a decline in 1982, and gains in both 1983 and 1984.

For each of the years 1980 through 1984, the composite return on equity for the 15 largest household goods carriers substantially exceeded the Bureau of the Census' composite "all-manufacturers' return on equity."

The operating ratio (ratio of operating expenses to operating revenues) favorably declined from 99.1 percent in 1978 to 96.6 percent in 1984.

Revenue tons hauled in 1984 totaled 3.5 million tons, the highest level in the seven-year period. Between 1978 and 1983, revenue tons hauled fluctuated between 2.9 million and 3.2 million tons.

The Motor Carrier Act and Household Goods Act of 1980 were enacted about the same time that the economy went into a severe recession. As a result, it is difficult to determine the precise effect of the Acts on the financial condition of the industry. However, available information indicates that, in general: (1) household goods carriers fared much better during the recession than did other motor carriers of property; (2) household goods carriers rebounded rapidly from the recession and have continued to improve; and (3) none of the largest household goods carriers has gone bankrupt, nor are there indications that a large number of small household goods carriers have gone out of business.

PRESENT TRENDS AND FUTURE DEVELOPMENTS

Since enactment of the Household Goods Transportation Act, there has been new entry into the industry, and as the economy continues to improve, we expect new entry to increase further. Existing carriers have substantially expanded their operations in an effort to reduce costs through efficiency improvements. These cost reductions and the greater competition made possible by new entry result in better service at less cost to the public.

In the past, we have mentioned the development of a signficant trend toward the use of contracts by household goods moving companies. This trend is continuing. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative pricing strategies are concerned. Several recent Commission decisions may accelerate this trend. In Ex Parte No. MC-165, "Exemption of Motor Contract Carriers From Tariff Filing Requirements," 48 FR 24388 (June 1, 1983), the Commission granted the exemption of tariff filing requirements to all motor contract carriers of property. This decision was affirmed by the District of Columbia Circuit of the U.S. Court of Appeals. A petition seeking Supreme Court review of the decision is now pending. As a result of this decision, more common carriers have applied for contract carriage authority.

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[2] This does not include revenues from accessorial service nor does it include the revenues of household goods carriers' agents.

The Commission has also granted contract authority to a household goods carrier authorizing it to serve a generic class of household goods shippers where the particular shippers are not named in the permit. The effect of this decision is to allow the carrier to solicit additional customers without having to return to the Commission for permission to serve each new customer obtained. This decision was appealed. Oral agrument has been held, and we are awaiting the court's decision. (*Global Van Lines, Inc.* v. *ICC*, No. 83-1938 (D.C. Cir. 1983), seeking review of Docket No. MC-1745 (Sub-No. 17), *Interstate Van Lines, Inc., Extension—Household Goods*). Since the Commission decided the *Interstate* case, it has granted contract authority to other household goods carriers to serve the same generic class of shippers, applying the precedent established in the *Interstate* case. As each of these decisions have become administratively final, they have been routinely appealed by competitors of the licensee. A total of 142 such challenges are being held in abeyance pending the outcome in *Global Van Lines, Inc.*, supra.

In addition to the rising number of carriers which are entering into contract service, there has also been an increase in the number of individual companies participating in approved pooling agreements. These agreements are being utilized as a means of improving operational efficiencies. As a result, participants are able to compete more effectively with the pricing practices of the larger carriers. The Commission's action in several cases involving pooling agreements is summarized below.

As previously reported, in No. MC-F-15004, *Atlas Van Lines, Inc., et al.—Pooling Application*, (not printed), decided July 15, 1983, Atlas Van sought approval of a pooling arrangement with its agents to supplant an existing agreement which allowed the latter to hold unrestricted operating authority. Under the new plan, the agents would not be allowed to retain their broad authority. The Commission approved the application and found that Atlas was under no obligation to pool traffic with any carrier. Opponents of the application failed to rebut the statutory presumption that the new pooling plan was in the public interest. The Commission's decision has not been appealed.

In a related proceeding, No. MC-F-14784, *Atlas Van Lines, Inc.—Pooling*, 127 M.C.C. 799 (1983), the Commission determined that it lacked jurisdiction over an earlier proposal of Atlas to deal exclusively with non-carrier agents. The Commission found that this previously proposed policy of Atlas to deal only with non-carrier agents was not a pooling agreement requiring our prior approval under 49 U.S.C. § 11342.

A number of Atlas' agents appealed this decision in *Rothery Storage and Van Co., et al.* v. *Interstate Commerce Commission and United States of America*, No. 83-1210 (D.C. Cir.). After briefing, the parties, on February 3, 1984, entered into an agreement to dismiss the petition.

In a separate proceeding, Nos. MC-F-4901 and 6152, *United Van Lines, Inc.—Pooling Agreement Modification* (not printed), decided May 25, 1984, (served June 5, 1984) the Commission approved modification of a pooling agreement between United and its carrier-agents which had the effect of limiting the geographic scope of its agents' authority. Under the new agreement, the agents are precluded from handling traffic moving more than 1,700 miles under their own authority. Previously, United had permitted its agents to elect to handle this long-haul traffic under one of three hauling options which the agents chose on an annual basis. The Commission rejected arguments advanced by a number of carrier-agents that the proposal was of major transportation importance and that it would adversely affect competition in the household goods industry. The Commission noted that in the past only four agents our of a total of 228 had chosen the long-haul option. Further, the Commission pointed out that the majority of United's stockholders were carrier-agents, and that the proposal had been approved by a Board of Directors whom they had elected. By decision dated June 27, 1984, the Commission denied a petition to stay its decision pending judicial review and permitted United to implement the modification 30 days from date of service of that decision (July 2, 1984). Subsequently, judicial appeals were filed by two of United's agents in *Three Way Corporation* v. *United States and ICC*, No. 84-1280 (D.C. Cir. docketed July 5, 1984) and *Budd Moving System, Inc.* v. *United States and ICC*, No. 84-1282 (D.C. Cir. docketed July 10, 1984) both involving review of Docket Nos. MC-F-4901 and MC-F-6152, *United Van Lines, Inc.—Pooling Agreement Modification*. The United States Court of Appeals for the District of Columbia Circuit denied a motion to stay the Commission's decision. Briefs have been filed, and oral argument was held on May 9, 1985. We are awaiting the court's decision.

As you know, the Commission is dedicated to implementation of the Household Goods Transportation Act in accordance with Congressional intent. The Commission has and is continuing to eliminate unnecessary regulations and is encouraging flexible, responsive, and innovative pricing. It appears that the industry and the public have both benefited from the provisions of the Act.

This concludes my prepared remarks, and now, Mr. Chairman, I will be happy to answser any questions you may have.

Senator PACKWOOD. Mr. Chairman, thank you.

What do you think about the administration's suggestion for total deregulation of the household goods industry?

Mr. TAYLOR. I think it is a very good one. We absolutely support it. I think we probably already indicated that in testimony earlier when we were here when the Secretary of Transportation testified. I must say, however, that we do believe safety and insurance regulation must remain.

Senator PACKWOOD. Those are always a part; even when we are talking about general deregulation of the freight industry, we do not mean safety and we do not mean insurance.

What about the argument many of the regional and local moving companies are alleging now that the policies adopted by the major van lines with respect to their carrier agents are restricting competition. If those charges are true, wouldn't this even be more true under total deregulation?

Mr. TAYLOR. Well, I think what is going on is that there is a certain amount of restructuring occurring within the industry. We have had some cases on this. In July of 1983 we had the Atlas pooling agreement case. I issued a dissent in that one, not so much on the merits of what Atlas was trying to do, which was really to restrict their agents to not doing anything more than just kingpack and pack and crate service. I felt that we should have examined that, and that the presumption in the statute against the anticompetitiveness of the pooling agreement should not have applied.

More importantly, with United Van Lines we have had a recent case in May of 1984. Actually, it was a division decision in which I did not participate. And in that particular matter, United sought permission to modify their pooling agreement to require that all shipments of household goods moving beyond 1,700 miles be transported pursuant to United's operating authority.

The question came up as to whether or not that is anticompetitive insofar as the public is concerned. What it really amounts to is what competition we are talking about. The theory is that if you do not have competition within the family, so to speak, but between families—that is, van lines and their agents with other van lines and their agents—that the van lines are in a stronger position to compete.

Frankly, I have some mixed feelings about it. I do not think we know all the answers yet, and I think we are going to have to watch the situation rather carefully. But I must say what United did is nowhere near as restrictive as what Atlas did, and I think there are other carriers which really do not allow their agents to have any authority to compete at all.

The argument I am sure you will hear from them is that this is an effort to strengthen and structure their van line operations in such a fashion that they in turn as a family will be better able to compete with other van line agent families and that that competition is more important than competition within the family itself.

I guess the answer is, as far as I am concerned at least, that the jury is still out on that. I think we will have to watch it, and I do not think I can tell you which one of those arguments is truly in the public interest at the moment. But it is a situation we are keeping our eye on.

Senator **Packwood.** Let me switch to buses a second and ask about the complaint of the American Bus Association and others of the charter grants to those public entities that have some form of subsidy. First, do you think under the present law you have any choice but to grant these, assuming they meet the standard?

Mr. **Taylor.** Well, we really do not. The question is, what does the standard really mean. Public interest is a nice broad phrase, and if you do not put some flesh on the framework it probably does not mean a heck of a lot. There is no question that the way the law is presently written, we are obliged to grant the authority if the public interest standard has in fact been satisfied.

There are some factors which the Commission has been considering in order to determine whether or not that public interest standard has been met. First, how broad or extensive is the charter authority that has been requested?

I think that has a great deal to do with it. Is it nationwide or, as in one case we had, simply a request to go into some adjoining counties in another State? It does not seem to me that that type of service is going to have a large impact, when you are talking about a government-subsidized carrier seeking only very limited charter or special service authority.

I think also the nature and extent of the subsidy is important. If it is 2 or 3 or 4 percent of the subsidized carrier's operations, I do not think that is as significant as if it is 80 or 90 percent of the operations.

And, most important perhaps, the harm to the private-funded competing carriers is significant, and particularly the harm that might be done to any regular route service that those carriers are providing. I think the Commission has moved in those directions in a number of cases we have just recently decided. If we can flesh out the public interest standard, then I think it will have some meaning.

But that has been our difficulty with it. I do not think Congress intended that we should never ever under any circumstances authorize a subsidized carrier to go into charter or special service operations, or you would have said so. You set a higher standard, a public interest standard, and what we have been trying to do is to develop some meaning for it.

Senator **Packwood.** Should we change the law so that it basically reads public entities cannot go into this unless you can make a finding that the equivalent charter service is not being provided by private carriers?

Mr. **Taylor.** Well, I think you could do that. Certainly it would clarify the situation. And you can make an argument that really nobody that is getting a subsidy ought to be competing with somebody who is not.

What we have tried to do is, since the public interest standard is there, to give it some meaning and try to keep a tight leash on it in terms of those criteria that I mentioned. But I think that is something you ought to consider.

Senator **Packwood**. The last question involves the preemption. As you are aware, the National Association of Regulatory Utility Commissioners will testify later today objecting to the policy of overturning intrastate rates where they are lower than interstate rates. My hunch is you are correctly interpreting what we did, but I want to know your view as to whether or not you should have that power.

Mr. **Taylor**. We think we are, and I would like to tell you why, Mr. Chairman. We have invited the States in our rate appeal decisions to show us how costs attributable to intrastate service are somehow less or different than those attributable to the interstate service, so that some justification can be provided as to why the intrastate rates should remain lower.

I must concede that is a difficult burden and a difficult test when both types of service are being provided on the same equipment. And, so far, the States have not given us any real or adequate basis or justification for their lower intrastate rates. That is what has happened through all of these cases.

So as far as we are concerned, we think it is rather clear that intrastate rates have been kept artificially lower, or depressed in many cases, for a long time. Permitting intrastate fares to seek the interstate levels, which in our view was one of the aims of the Bus Act, has been going on, and we view that as a plus in order to keep some essential intercity bus service financially viable.

I mean, I think that has been one of the problems with the bus industry, and the Bus Act endeavored to address that, and we have tried to respond as well. We would be glad to listen to whatever justification they can give us for the lower intrastate rates, but the bottom line is we have not heard any yet.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Thank you very much, Mr. Chairman. Good morning, Mr. Chairman.

One of the goals of the Bus Act of 1982, which I vigorously opposed but it passed overwhelmingly, was to make it easier for carriers to enter markets, particularly rural markets. To what extent has deregulation encouraged entry into rural markets?

Mr. **Taylor**. Well, I think there has been a lot of entry. I will concede to you, Senator Pressler, that there has been a bigger movement to get into the charter and special service operations, which are perhaps more lucrative and do not require as much management time as regular route service, but we have had entry under the act.

I cannot give you specific numbers, but certainly the existing companies too have had the freedom to rationalize their systems and their structures, and we are still in the midst of some transition in the bus area. The bus industry financially has not been that well off, so it may take a little longer than originally anticipated.

But it is going on and we think that it is working smoothly. I am sorry to hear about all those discontinuances in South Dakota. We have not had any filings that I am aware of, certainly of the areas that you have talked about. I asked Director Sporn, who is sitting on my left. Are those matters that have been filed with the South Dakota commission?

Senator **Pressler**. I think some of those are being filed this week, so you will probably see them soon.

Another concern expressed by this committee was the impact on small communities, particularly abandonment of unprofitable rural lines. Section 16 of the Bus Act specifically requires that the ICC shall consider whether a community is losing its last bus service. How many appeals of State decisions regarding abandonment have involved communities losing their last bus service? Have those all been upheld by the commission?

Mr. **Taylor**. I do not know that I can break it out that way. Let me ask Director Sporn if he has any numbers. I can give you some numbers on cases we have had. We have had a total on intrastate exit appeals of 46 petitions received. Thirty-eight have been granted. One was granted in part—a Texas Greyhound case. Two were dismissed for lack of jurisdiction—Georgia and California; those were both Greyhound cases. One was dismissed as moot, which was a second Virginia Stage Line case in West Virginia, and four are still pending. As a matter of fact, I think we have five now.

But I do not think we have broken them out on the basis of last remaining service, or if we have, I am not aware of it.

Mr. **Sporn**. No, we have not, Senator, though if you like we can go through all the cases and come up with specifics on the number of cases that involved the last service.

Senator **Pressler**. That would be useful, if you would do that for the record.

Mr. **Sporn**. We will be happy to do that right away.

[The following information was subsequently received for the record:]

Interstate Commerce Commission,
Washington, DC, October 24, 1985.

Hon. Larry Pressler,
U.S. Senate,
Washington, DC.

Dear Senator Pressler: This is in response to your request at the Senate's Bus Act oversight hearings on October 21, 1985, for information concerning the number of communities that have lost bus service as the result of Commission action in exit cases.

Since passage of the Bus Act in 1982, the Commission has granted 39 exit petitions seeking permission to discontinue service in 19 States over 106 separate routes involving approximately 455 points. None of these exit proceedings involved a request to discontinue service in South Dakota.

Attached is a list that shows the number of affected points in each of the various States that have been the subject of exit petition grants. The list also shows the carriers that have discontinued service in each State, the number of routes and points that each carrier has abandoned, and the number of exit petitions filed by the various carriers for each State.

It should be noted that in each exit petition proceeding the Commission has considered whether the transportation sought to be discontinued is the last bus service to points on the routes sought to be abandoned. However, the identification in these cases of points and populations that will lose bus service unfortunately cannot be taken alone as a sufficient showing of public interest to warrant denial of an exit petition. The Commission also has had to consider the carriers' profit and loss picture on each route, the various goals of the national transportation policy, and the effect of any offers of subsidy, or the lack of any such offers, in order to balance the local interests in support of continuing services and the policy of the Bus Act that favors exit from unprofitable routes.

Our records do not show specifically whether particular discontinued services continue to be offered by other carriers, or whether particular replacement authority has been sought by other carriers. However, the evidence in some exit proceedings has shown that certain carriers are willing to provide service over routes or route segments or to points sought to be abandoned.

For example, in two proceedings in which Trailways Lines, Inc., sought permission to discontinue service over various routes in Kansas, a Trailways affiliate showed that it intended to conduct replacement services to most of the points sought to be abandoned, and that it had received, or had applications pending for, authority to serve those points. In Greyhound's proceeding to discontinue service over three Minnesota routes, there was evidence that an existing carrier with authority over one of the routes was eager and willing to provide a substitute service for that sought to be discontinued, and that a local civic organization was willing to develop plans to attempt to promote and increase ridership on another of the routes. In its Texas exit case, Greyhound showed that an individual had testified at the State hearings as to his bus company's plans to offer service at one point proposed to be abandoned, and that another carrier intended, subject to Greyhound's discontinuance, to institute service over the main route that Greyhound proposed to abandon. I might also point out that in that case, the Commission found the leading evidentiary factor to be whether reasonable alternative services were available, and denied Greyhound permission to abandon service to those points where there were none. A Trailways subsidiary showed in its North Carolina exit proceeding that an affiliate already had taken over and initiated operations on a portion of the route to be discontinued.

There also has been evidence presented in many cases showing some form of alternative service already available, by either the petitioning carrier offering transportation over proximate routes or at nearby service points, or by another carrier operating over the route or to the points sought to be abandoned. In some instances, the petitioning carrier proposed a route restructuring that would offer proximate services over routes generally running over superhighways parallel to the routes to be abandoned.

The number of points that have lost bus service is not insignificant, but it is fair to conclude that not all of them have been left without any alternative whatsoever to the discontinued service. It also is fair to conclude for those points that have lost their last service, that if the level of interest of existing and potential users is reasonable, then new, different services might be profitable and could be offered. However, if the interest is such that services, no matter their form, are likely to lose money and to be viable only with financial aid through either cross-subsidy or government assistance, then it is not likely a new carrier will consider abandoned routes as targets of opportunity.

I trust the information provided here is satisfactory. If I may be of further assistance in this or any other matter, please do not hesitate to contact me.

Sincerely yours,

Enclosure.

Reese H. Taylor, Jr., *Chairman.*

Points Affected by Exit Petition Grants

Alabama—1 exit petition, 1 route, 4 points: Trailways Southern Lines, Inc., 1 exit petition, 1 route, 4 points.

Kansas—4 exit petitions, 7 routes, 26 points: Greyhound Lines, Inc., 1 exit petition, 1 route, 2 points; Trailways Lines, Inc., 2 exit petitions, 5 routes, 21 points; Oklahoma Transportation Company, 1 exit petition, 1 route, 3 points.

Kentucky—1 exit petition, 2 routes, 17 points: Greyhound Lines, Inc., 1 exit petition, 2 routes, 17 points.

Louisiana—2 exit petitions, 12 routes, 24 points: Greyhound Lines, Inc., 2 exit petitions, 12 routes, 24 points.

Maryland—1 exit petition, 1 route, 5 points: Carolina Coach Company, 1 exit petition, 1 route, 5 points.

Minnesota—1 exit petition, 3 routes, 16 points: Greyhound Lines, Inc., 1 exit petition, 3 routes, 16 points.

Missouri—2 exit petitions, 2 routes, 19 points: Greyhound Lines, Inc., 1 exit petition, 1 route, 11 points; Midwest Buslines, Inc., 1 exit petition, 1 route, 8 points.

Nebraska—2 exit petitions, 2 routes, 16 points: Greyhound Lines, Inc., 1 exit petition, 1 route, 3 points; American Buslines, Inc., 1 exit petition, 1 route, 13 points.

New York—1 exit petition, 3 routes, 26 points: Greyhound Lines, Inc., 1 exit petition, 3 routes, 26 points.

North Carolina—2 exit petitions, 2 routes, 16 points: Trailways Southeastern Lines, Inc., 2 exit petitions, 2 routes, 16 points.

Oklahoma—8 exit petitions, 15 routes, 89 points: Greyhound Lines, Inc., 1 exit petition, 3 routes 28 points; Trailways Lines, Inc., 2 exit petitions, 2 routes, 3 points; Oklahoma Transportation Company, 4 exit petitions, 7 routes, 45 points; Missouri, Kansas and Oklahoma Coach Lines, Inc., 1 exit petition, 3 routes, 13 points.

Oregon—1 exit petition, 9 routes, 22 points: Greyhound Lines, Inc., 1 exit petition, 9 routes, 22 points.

Pennsylvania—1 exit petition, 12 routes, 17 points: Greyhound Lines, Inc., 1 exit petition, 12 routes, 17 points.

South Carolina—1 exit petition, 1 route, 7 points: Greyhound Lines, Inc., 1 exit petition, 1 route, 7 points.

Tennessee—5 exit petitions, 9 routes, 55 points: Greyhound Lines, Inc., 2 exit petitions, 6 routes, 48 points; Trailways Tennessee Lines, Inc., 2 exit petitions, 2 routes, 6 points; Trailways Southeastern Lines, Inc., 1 exit petition, 1 route, 1 point.

Texas—1 exit petition, 10 routes, 26 points: Greyhound Lines, Inc., 1 exit petition, 10 routes, 26 points.

Utah—1 exit petition, 1 route, 12 points: Trailways Bus System, Inc., 1 exit petition, 1 route, 12 points.

Washington—1 exit petition, 4 routes, 18 points: Greyhound Lines, Inc., 1 exit petition, 4 routes, 18 points.

West Virginia—3 exit petitions, 10 routes, 40 points: Greyhound Lines, Inc., 2 exit petitions, 7 routes, 22 points; Virginia Stage Lines, Inc., 1 exit petition, 3 routes, 18 points.

Mr. TAYLOR. Let me identify Director Sporn as the director of our motor section in the Office of Proceedings for the record.

Senator PRESSLER. How many new communities or new routes have been added to the regular intercity bus system and how many of those communities have populations of under 10,000 residents?

Mr. TAYLOR. Again, Senator, I cannot give you that number off the top of my head, but we will look it up for you and do the best we can to supply the data for the record, if we may.

Senator PRESSLER. I think that would be a useful thing because I believe that it will indicate that towns of under 10,000 have been on the losing end of this in terms of some basic service.

Let me say that a lot of our senior citizens and others depend heavily on bus transportation and for someone who does not operate a motor vehicle it is frequently the only means of traveling, whether they are senior citizens or high school students or whatever.

Could you outline the efforts the Commission is making to help communities and governments faced with termination of service?

Mr. TAYLOR. Well, that is an effort I am really proud of. We have done quite a bit, both before the exit occurs and afterwards. Our Office of Special Counsel has prepared a very detailed booklet—I think we have got some in the room, hopefully; Dan King is sitting behind me—to try and tell people how to participate in our proceedings. There are a lot of people in small communities who are somewhat awestruck at the prospect of getting into a case before the Commission.

This is the orange booklet prepared by the Office of Special Counsel. It has been very widely circulated. We have had a number of requests for it. Communities have expressed their appreciation for the opportunity to work with the staff in our Office of Special Counsel so they can learn how to put a case together and how to proceed.

We also have an after-the-fact booklet, in the event the abandonment occurs, which is a guide put out by our Small Business Assistance Office. This has also been very widely circulated and requested in a number of quarters. It explains how to apply for permanent operating authority in the effort to come up with some substitute service.

I think we have done everything we can, because I would agree with you that if the Bus Act is viewed as simply an attempt to do rural America out of its essential intercity bus service, it probably is not going to last very long. I think we are going through the rationalization period. Hopefully these booklets will help. We have worked hard to try to see that there is substitute service available.

Senator **Pressler**. Well, I hope you will keep in mind the South Dakota case example because we are having a very difficult time and our experience has not been borne out by some of the optimistic paragraphs in your reports, although those reports include a severe problem.

Mr. **Taylor**. Specifically with the towns and communities you mentioned, what I would like to do is meet with you myself and have Dan King perhaps meet with your staff and see what we can do to be of some specific assistance in those specific areas.

Mr. **Pressler**. Well, thank you very much.

Am I out of time? I have three more questions.

What have been the findings of your Office of Compliance and Consumer Assistance regarding the liability insurance problem?

Mr. **Taylor**. Bernie Gailliard, who runs our Office of Compliance and Consumer Assistance, is here. Insurance is really a very, very serious problem and we are endeavoring to address it. I will ask Bernie Gailliard to respond to that.

Mr. **Gailliard**. Senator, while we have not completed our assessment of the findings, the data results are in and basically what it shows is that we have not been able to discern any correlation between the rapid increase in insurance premiums and any loss experience of the carriers. That is one of the most revealing things.

There are a number of other findings, but I want to first point out that this survey is very unscientific. We developed a list of carriers who receives follow-up letters 14 days after we receive insurance cancellation notices, and, based on telephone calls to those carriers, our staff recorded their views of why they are experiencing these difficulties. It is an unscientific, informal survey. This week, we will complete the assessment of that survey. We will be happy to provide you a copy of the results for the record.[1]

Mr. **Taylor**. Senator, could I just add that we have a petition from the American Trucking Associations to look into the whole insurance matter, and I think the American Bus Association is very interested in it as well. I cannot announce the results at this juncture. It has not cleared yet, but it is before the Commission at the moment.

Senator **Pressler**. That was an answer to my next question, what do you feel can or should be done about the insurance crisis.

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[1] The survey has been retained in the Committee files.

Finally, what is your reaction to the ATA and UBOA proposals to establish a motor carrier administration with an intercity bus division within the DOT?

Mr. TAYLOR. Well, initially I thought it would just create another bureaucracy, but I have listened to the industry's arguments for some special attention over there at DOT and I think they are probably sound. The only thing I hope is that structurally—and this is really, I suppose, not for me to say— the promotional parts of what is going to go on for motor carriers would be separated from the policing actions that might be involved with respect to safety and insurance. But that is something that they will have to address. That is really not our problem, but I think probably it is a good idea for them to have a presence and a separate identity there.

Senator PRESSLER. Mr. Chairman, in conclusion let me say that I would say that I think the committee should take note there has been a cheery report on how the Bus Act of 1982 is working, but for at least 20 South Dakota towns it is not working well and for another 5 they are getting reduced service and it is not working well. I think we should take close note of this situation in terms of it and I will try to work with you in terms of trying to make some corrections.

Mr. TAYLOR. We really will. I will be glad to do that. In fact, I will come up and meet with you myself and then perhaps we can start some discussions between Dan King and your staff.

Senator PACKWOOD. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I look with some concern on the history of the Regulatory Reform Act of 1982 in terms of West Virginia. We have, Mr. Chairman, 65 communities which have lost bus service altogether in the last 3 years. Since 1982 we have seven more which have lost 50 percent or more of their bus service. There has not been one single example of replacement in any of those or any other communities in West Virginia, in terms of bus service.

Now we have had people try to do something about this and our public service commission has come before you on four different occasions and have been reversed four times. I do not know what your percentage is in terms of how the States are doing versus the Commission, but it would just occur to me that we are losing heavily in our rural State of West Virginia.

What are we to do about it?

Mr. TAYLOR. Well, I think the thing we have to try and do is see if we cannot find some substitute service. I know that you are interested in this and so is Senator Byrd. He is on the Subcommittee on Transportation at the Appropriations Committee, and has asked us about this when we have testified before that subcommittee.

There have been a lot of abandonment requests involving routes in West Virginia. They have not all been involved with appeals before the Interstate Commerce Commission. Some have been authorized by the West Virginia State Commission.

There are a lot of avenues available—you do not necessarily have to have a great big huge bus. Sometimes you can operate with a van. We had a problem out in my State, Nevada, trying to get some service over to one of the small towns over in the eastern end of the State, and we wound up with a van going across the desert one day and coming back the next. And it does the job. Sometimes that is enough to do it.

There are subsidy moneys available.

Senator **Rockefeller**. Mr. Chairman, I remember programs like that. I remember one called the Trip Program, and the Trip Program was a sensation in terms of its early beginning because it was funded, I believe, 100 percent by the Federal Government. It was for seniors and for the poor in the rural areas. And then, as happens here and as will continue to happen, it is now no longer federally funded at all and was switched entirely to the effort of the State to undertake.

As a result, the Trip Program barely survives. It is one thing to talk about vans and I understand that the ICC does not put people out of business, but in a deregulated climate or in that direction how is it that a rural State with a small population, with a lot of small communities, only very few of which have more than 5,000 people—25 communities have more than 5,000 people in our State—how are we to get bus service if the purpose of the deregulatory Act in 1982 used the words "to provide and maintain service to small communities"?

Mr. **Taylor**. Well, I do not think what it said was to maintain service to all small communities in keeping with the then-status quo, regardless of whether or not those services were making any money. The bus industry as a whole financially is experiencing declines. It has not turned around yet. It is really in somewhat dire financial straits.

The point is that I cannot offer you a panacea as to how you are going to go back and have exactly all the service you had before. As I said before, some of those cases were discontinuances that were authorized by the West Virginia commission. They have not all been the result of actions taken by us.

But I think to the extent that some money can be made on a different kind of operation than perhaps Greyhound or Trailways was conducting that we can work together on that, whether it is the result of publicly-assisted funds or not. We are available to do that and have tried to do that. And I think that is about the best we can say. It is probably not going to give back everybody all the service they had, but then a lot of that service involved only a couple of people riding the bus.

Senator **Rockefeller**. Now you held up that orange book. Is that kind of a manual for small communities?

Mr. **Taylor**. This is a manual to be used when you are faced with service discontinuances, showing how you should participate in a proceeding, so that you know how to try and keep your service before it is gone. And this other booklet in effect says, this is what you do if you have lost your service, if you want to come to the Commission and try and get some substitute service.

Maybe there is a driver of a bus line who knows what the ridership is, and the service has been discontinued. He says well, I know who gets on here and there. Maybe I could make a go of it with a van line or with some small bus equipment. And it is those kind of people that we are endeavoring to work with through this transitional period.

Senator ROCKEFELLER. Those kind of people ultimately, it seems, in the direction we are going are going to have to go head to head, so to speak, with Greyhound and Trailways. Now I like the orange book and I like the blue book. I am not sure they are going to do the job for the small communities and small local officials of rural States like West Virginia or Nevada.

Mr. TAYLOR. Well, we are not sure either, Senator, but we are trying, because we think it is very, very important to maintain service that is really essential. And you are right. We have Indians in our State that would not get to the Washoe County Medical Center if it was not for some bus service being available to them. There is no other way they can go. More people ride buses in that area than any other means of conveyance.

Senator ROCKEFELLER. What is meant—in the 1982 Bus Act—by the Commission—"cooperating with each State and the officials of each State to provide and maintain service to small communities"? Does that mean only to the extent that the free market system provides ridership, and if it does not, then those clauses simply wash out of the bill?

Mr. TAYLOR. No; I do not think that I would be quite that brutal or harsh about it. I think what Congress was endeavoring to say is, we do not want this Bus Regulatory Reform Act passed and then all of a sudden have nobody serving anybody but the big population centers and to have rural America really done out of essential intercity bus service.

Again, it is this matter of trying to strike a balance. You cannot force somebody to operate a bus out 100 miles into some rural area with two people that ride it every day. That just does not make any sense.

Senator ROCKEFELLER. For the balance, Mr. Chairman, I conclude that it is West Virginia zero, bus companies 72. That is not the kind of balance that helps us at all.

Mr. TAYLOR. Well, let me suggest that I would be glad, as in Senator Pressler's case, to come meet with you. We have discussed it with Senator Byrd and his staff because I know of his interest. I have not had a chance to personally get acquainted with you in any event, and I would like to do that, not only about this but some other matters that involve West Virginia. Perhaps we could arrange that, and I will bring Dan King along and we will offer to help any way we can.

Senator ROCKEFELLER. I will look forward to that, Mr. Chairman.

Mr. TAYLOR. Thank you, sir.

Senator PACKWOOD. Any other questions?

Senator PRESSLER. Mr. Chairman, or Mr. Ultimate Chairman, I have a couple more.

Senator PACKWOOD. Russell Long is the ultimate Chairman.

Senator PRESSLER. I want to commend Senator Rockefeller's questions. I am no longer the Lone Ranger in talking about rural issues on this committee.

But I think in these reports that have come forth that a very clear distinction should be made. That is, the rosy side of it is the charter service regarding buses. The intercity service, the regular route is the thing that I am concerned about. That is where we are losing. And in rural States such as West Virginia, Iowa, and South

Dakota, and towns less than 10,000—or indeed New York, upstate New York—we need to know.

These studies should focus on the real story of the intercity service regular routes. Now the accumulation of numbers tries to blend the two, and the rosy picture that is painted puts a lot of emphasis on the charter service increases, and I will say that that has happened. But in terms of scheduled intercity service, the kind that a senior citizen depends on who cannot drive a car, the kind that a citizen who is in the State who cannot afford to own a car, the kind that a person with a medical liability who cannot drive a car—and there is something to be said for a national transportation system.

I know we cannot provide transportation everywhere at every stop, but what I have always been afraid about the deregulation legislation, whether it is airlines or buses or whatever, is that we are totally abandoning the ICC, the old 1932 common carrier responsibility, where if you get some very rich routes you also provide some public service. And that is how our national transportation system was built. It is in the national defense interest and it is in the national interest in the welfare of our people.

But my question to you is compare the increases. Is it not true that the rosy picture in these government reports springs from charter service increases and not from intercity service, especially in towns with less than 10,000 people?

Mr. TAYLOR. Not entirely, Senator. You are absolutely correct that there has been more entry in the charter and special service areas, because the bus people themselves call that the cream of the business. So, there has been more entry in that sector than there has been for regular route service.

Senator PRESSLER. How about some numbers in terms of entry and exit from towns of less than 10,000 on intercity service regular routes?

Mr. TAYLOR. Well, I have just been handed by director Sporn some numbers that he apparently brought with him. We have had 3,962 entry applications processed.

Senator PRESSLER. Three thousand nine hundred and sixty-two-entry—for cities of less than 10,000?

Mr. TAYLOR. No; I cannot break it down that way. I will give you all the numbers we can easily get our hands on, but this is all I can give you at the moment.

1,384 of that 3,962 were existing carriers, and 2,578 were new applicants.

Senator PRESSLER. Now that is for intercity service or is this chartered?

Mr. TAYLOR. No; this is for all kinds of new entry.

Senator PRESSLER. Now how many of those are charter?

Mr. TAYLOR. I am going to try and give you a little bit of a breakdown. Of the 3,962, 3,704 have been submitted for formal decision; 3,529 have been unopposed; and 175 have been opposed.

Let me give you now what I think is more what you are looking for. There have been 48 contract applications, which represents 1.2 percent of the total.

Senator PRESSLER. Contract applications? And what are they?

Mr. TAYLOR. This is for contract carrier authority as opposed to common carrier authority. I think I am going to let Mr. Sporn do this because they are his notes and rather than my try and make sure I am saying correctly what he has presented, let him give these to you.

Mr. SPORN. Senator, of the 3,704 that have been submitted, 3,305 involved special and charter, 52 involved intrastate regular route, 354 involved both inter- and intrastate regular route, 115 involved interstate regular route, and 24 involved a combination of intrastate regular route and special and charter applications.

In fact, over 10 percent of our applications, probably closer to 12 percent, that have involved some sort of regular route service.

Senator PRESSLER. So 90 percent of that is charter service?

Mr. SPORN. Yes; our figures indicate that about 83 percent involve special and charter operations. There is no question, from our standpoint, that most of the new entry in the industry since the Bus Act has been in the special and charter area, but we also have seen probably 500 or 600 new applications for regular route service.

As the chairman mentioned, a significant number of those applications are new applicants, and hopefully, they will be springing up in the small communities to provide service in the future.

Senator PRESSLER. Well, that is exactly what I have said. But about 80 to 90 percent of the increase is in the charter area, not the regular route.

Now give me the exit numbers. Do you have the exit numbers, the analogous exit numbers?

Mr. TAYLOR. I think I already gave you the fact that we have had 46 petitions, 38 granted, 1 in part in Texas—a Greyhound case.

Senator PRESSLER. Those are all intercity service regular routes, are they? Is that correct? How does that compare to the exit from the charter service?

Mr. TAYLOR. Well, I do not think I have seen a charter/special service exit——

Senator PRESSLER. Your numbers bear out my point, and I will make it stronger, that the rosy picture that is being painted is increases in charter services, so I think we should focus on the intercity service, regular route, especially in towns of below 10,000. I think we see a devastating picture.

Mr. TAYLOR. The bulk has been charter/special services, but in excess of 10 percent have been for regular route authority. And Greyhound can give you some figures about applications they have gone back into—I have not seen any from Trailways, but I am sure they can as well—communities where they have changed their routing and their service.

So, you cannot say that new entry is exclusively charter/special and no regular route.

Senator PRESSLER. Could you for the record give us in a day or two information for towns of less than 10,000 and can we frame this question to be sure to get at what we are going after, the intercity regular route service in towns of less than 10,000, in view of the questions that I have asked? Can we get that in a day or two? Would your staff work with mine on the framing of that question?

Mr. TAYLOR. Let me just defer to Director Sporn on this because I do not want to commit him to something he cannot do.

Mr. SPORN. Senator, we will be happy to work with your staff, although quite frankly it would take us more than a day or two to go through the substantial number of applications and determine which involved communities of less than 10,000. If you can give us some lead time, we will be happy to go through the applications, but our computer system is not designed to segregate the size of the population of the applicant's request.

In addition, a number of the applications for regular route service will cut across a number of States, a number of different cities and locales, and it might be somewhat difficult to do that manually.

Senator **Pressler**. I know, but the studies that have been done have all focused on the other side. What the press is being handed and what the public is being handed is that this Bus Act of 1982 is working so great. I think it would be very important to rural and small town America and towns of less than 10,000 that we see that side of it and that we have that side of it.

We have done these studies that we have here, and they do not show that side of it. And your testimony illustrates what I am saying. With intercity regular route service, especially in towns of less than 10,000, we have a devastating story and the studies have just completely ignored it. We get this rosy picture that this hearing was started with and it is just not true. It is a very misleading conclusion.

Mr. **Taylor**. Senator, we will try to get you all the numbers you would like, as quickly as we can put them together. We will contact your staff later today. We will not delay it, but I just do not think we can do anything for you if it has got to be done by hand in the next day or two.

Senator **Pressler**. OK. But the studies that have been done have just totally ignored this, and that is why I am insisting on it, because we are operating with very false numbers.

Senator **Packwood**. Mr. Chairman, thank you very much.

Mr. **Taylor**. Thank you very much, Mr. Chairman. It was a pleasure being here.

Senator **Packwood**. Happy to have you back.

Next we will have Secretary Philip Haseltine, and while he is coming to the table, Senator Rockefeller has an opening statement that he has not yet had a chance to make.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator **Rockefeller**. Thank you, Mr. Chairman. I will be very brief.

The many deregulatory acts of the last few years dealing with not only airlines, railroads, trucks and buses have been, to put it very mildly, a disaster for the State of West Virginia. In fact, I could construct a very good argument, Mr. Chairman, that the combined effect of deregulation has wreaked havoc on the transportation infrastructure of my State.

The Bus Regulatory Reform Act of 1982 is one manifestation of the problem. In 3 short years, some 65 communities in West Virginia have lost all regularly-scheduled bus service, and in another seven communities over 50 percent of bus service has been lost. Furthermore, to hold that deregulation would somehow prompt new entrants into the market to take up the place of the larger carriers who left has been a fiction in West Virginia.

To the best of my research, no communities, zero, have received replacement service in West Virginia. Gone or at least 90 percent gone are the Trailways buses from West Virginia, going are the Greyhound buses—running to chase the profits of the easy interstate routes. Gone is the ability of the State public service commission to protect the traveling public from service reductions, with no victories in four efforts before the Interstate Commerce Commission.

Mr. Chairman, when deregulation means streamlining paperwork, when it means reducing unnecessary burdens, and when it means other decent and reasonable things, I can see its wisdom well. But when we allow common carriers to have free rein to leave the rural traveling public stranded, as in West Virginia, the Congress, it seems to me, has shirked its responsibility to a large segment of the American people.

Mr. Chairman, as much as the service has diminished, I have also to wonder whether deregulation has had an impact on safety. Is the bus system an accident waiting to happen? Will the drastic reduction of Department of Transportation bus inspections from 6,000 in 1980 to 1,000 in 1985 be paid for in loss of life, or has it already? Are the many buses that rarely get inspected, the interstate charter buses like the one that recently crashed in Bramble, West Virginia, going to extract a painful price from all of us in the long run?

I do not know the answer to these questions, Mr. Chairman, but I am glad I am on the subcommittee. I look forward to the hearing today and I look forward to next week's hearing on motor carrier safety, and I hope that we will get some answers. I thank you, sir.

Senator **Packwood**. Thank you, Senator.

Mr. Secretary.

STATEMENT OF PHILIP W. HASELTINE, DEPUTY ASSISTANT SECRETARY OF TRANSPORTATION FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. **Haseltine**. Thank you, Mr. Chairman, members of the committee. It is a pleasure for me to be here today to discuss the administration's views on the economic regulation of household goods carriers and motor carriers of passengers. We believe that the results of the legislative reforms enacted to date have in fact been very positive.

For the past 5 years, household goods carriers have been operating in a less regulated, more competitive environment provided by the reforms of the Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980. I am pleased to report that, as the Department has testified in previous years, reform is working well in the household goods sector of the trucking industry.

Few segments of transportation were as heavily regulated as the household goods carriers were in 1979, and the 1980 reforms suddenly thrust them into a whole new competitive environment. However, during the past 5 years household goods carriers have taken advantage of these reforms to provide shippers with new and improved services as well as to offer more competitive prices.

Many new services, such as binding estimates and guaranteed pickup and delivery, have proven especially popular with consumers. In addition, customer complaint levels have fallen sharply since 1980. Even during some difficult economic times carriers were providing better service to consumers than they were during the days of strict old-fashioned regulation. As the economy improved, the motor carrier industry as a whole returned to profitability, with household goods carriers leading the way. In 1984, this segment of the trucking industry enjoyed its best year since 1979.

In summary, Mr. Chairman, we believe that regulatory reform has worked well in the household goods moving industry. The time has come to remove additional regulatory burdens—household goods carriers are included in the administration's legislative proposals to provide further economic deregulation of motor carriers of property and freight forwarders.

In the 3 years since the implementation of the Bus Regulatory Reform Act of 1982, the intercity bus industry has utilized the provisions of the act to respond to a rapidly changing market environment. The regular route scheduled segment of the industry has experienced significant new intermodal competition from the expanding reduced rate airlines, as well as the more traditional competition of the automobile. Provisions of the act have permitted rapid adjustments in fares and service to respond to changing demand.

The entry provisions of the act are permitting competition in areas previously served by a single carrier. They are also permitting new entrants to provide service more precisely attuned to the realities of present day demand than that traditionally provided by the older carriers now exiting some markets.

The charter bus and tour segment of the industry is expanding at a rate which would have been unimaginable prior to regulatory reform. Entry into the regular route segment is also occurring at a rate far in excess of that of the period preceding the Bus Act. Between implementation of the act and the end of 1984, over 3,500 applications to the ICC for operating authority were published in the *Federal Register* and, subsequently, the *ICC Register*. Some 554 of these involved regular route authority.

In the years 1980 to 1982, by comparison, regular route applications averaged only 78 per year. In addition to entry by small entrepreneurs, transfers of routes from a national carrier to an independently-owned affiliate of the carrier have taken place in recent months. A national carrier also recently has begun a franchising system through which it franchises its trademark to independent carriers and provides them with assistance, training and terminal access.

An examination of the data shows that the decline in service experienced after regulatory reform does not appear to be a product of that reform but, rather, a continuation of a long-term trend. This trend does not seem to have been significantly altered by regulatory reform, with the exception of the large but apparently temporary surge in exit applications which occurred during the period immediately after the act was passed.

The elimination of antitrust immunity for collective ratemaking for other than general rate increases has encouraged fare competition. A number of approaches to competitive pricing are being tried by various carriers. In short, the post-Bus Act period is experiencing a degree of fare competition not seen prior to the passage of the act.

The intercity bus industry appears to be in a period of retrenchment as companies seek to cope with declining demand and more intense competition from other modes. Without the freedoms provided by the act, necessary realignments would have been significantly more difficult, if not impossible, to achieve in a timely manner.

That concludes my prepared remarks, Mr. Chairman. I will be glad to answer any questions that you or other members of the committee may have.

Senator **Packwood**. Mr. Secretary, there is legislation in the House that will make it more difficult for subsidized Government-owned carriers to get authority. What is your view about it?

Mr. **Haseltine**. We have not taken a position on that at this point. I would withhold my view on that until we have a views letter, which we would be pleased to share with you, Mr. Chairman.

[The following information was subsequently received for the record:]

We are aware of this problem. Recently we submitted a views letter to the House Committee on Public Works and Transportation which simply stated that the Department supports efforts to prevent unfair competition. The Department of Transportation is also currently involved in rulemaking procudures regarding provision of bus charter service by carriers that receive assistance from UMTA. Therefore, we are prohibited from discussing certain aspects of this issue.

Senator **Packwood**. Do you think the complaints about insurance are justifiable complaints? Clearly insurance premiums have gone up. Are the complaints justified?

Mr. **Haseltine**. Without question there are serious insurance problems throughout the motor carrier industry. Those problems, in our view, are certainly not a product of economic deregulation nor, would I add, Mr. Chairman, are they a product of the higher financial responsibility rates which have recently gone into effect for motor carriers of property and are going into effect for motor carriers of passengers.

Rather, the insurance problems stem from broader problems throughout the casualty industry, partially as a result of the insurance industry devoting a great deal of its resources to investments when interest rates were high. As we know, interest rates are no longer high. Premium increases for underwriting have been very low throughout the past few years, particularly during the high interest era, and the insurance industry in general is now in a very serious position, largely as a result of the characteristics and the manner in which it has done business for the last few years, certainly not as a result of deregulation, nor, in our view, is it a result of the higher premiums for financial responsibility.

Senator **Packwood**. I have not heard anybody complain that deregulation is the reason for the high insurance premiums. My hunch is they would be in the same box or even worse, I am not sure, had we continued the old system.

Now let us go to household goods. The administration wants to totally deregulate. The household goods transportation industry is opposed, although that is not surprising. I do not mean that critically or otherwise; I find very few regulated industries, despite their complaint about the heavy hand of government, that really want to be deregulated when we say OK, we will take the heavy hand of government off of you.

Why do you think the time is appropriate now to go ahead with the final deregulation of the household goods moving industry?

Mr. **Haseltine**. First of all, of the entire trucking industry, since the reforms of 1980, the household goods industry has responded perhaps best and is, within the trucking industry, probably in the best financial condition. Since 1980, under a less regulated environment, the experience of consumers, of customers of the household goods industry, has been very, very positive.

We believe that that industry has adapted well. We believe that in terms of the special antitrust immunity enjoyed between van lines and their agents that some restructuring will be required, although we believe the extent of that restructuring without antitrust immunity is somewhat overstated. However, some time is needed for that industry restructuring to take place and therefore we put into the administration's bill a 3-year phase-out for that special antitrust immunity.

Basically the household goods industry has fared well under the partial reforms of 1980. It has adapted well and has returned to profitability. It has been good for the consumers, good for the carriers alike, and we believe that the time is now right to move forward to complete the process.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Yes; I find it strange that the study by the Department of Transportation called Impacts on Regulatory Reform on Intercity Bus Service reaches the conclusions it does, because the numbers in it point to a different conclusion.

For example, on page 1 of the executive summary, it says the number of communities receiving bus service was found to have declined at an average annual rate of 3.3 percent between 1975 and 1982. Following passage of the act, the rate of decline increased, with declines of 9.2 percent from 1982 to 1983, and 11.6 percent from 1983 to 1984.

Thus, while bus service declined following passage of the Bus Act, these declines were a continuation of a trend of service drops that was well established prior to the act in 1975 and 1982 period. My word, going from 3.3 percent to 11.6 percent is a substantial increase. I mean, the conclusions of this report are the opposite of the numbers.

Sometimes when you do a study you juggle the numbers around. In reading this, you have reached just the opposite conclusions of what you said in your testimony and just the opposite conclusion. The numbers, your own numbers, dramatically point to just the opposite conclusions.

Mr. **Haseltine**. We think not, Senator. First of all, prior to the 1982 act there was certainly a lot of desire for exit from some service points by intercity bus companies. Obviously the reforms of the 1982 act let that pent-up demand to exit unprofitable routes manifest itself and let the companies in fact leave those unprofitable routes.

In addition, I would add that some of the abandonments immediately subsequent to the 1982 act were not effective immediately, but some of them were effective in 1983 or even in 1984. So that still even through 1984 I think what we were seeing was the release of that pent-up demand by carriers to get away from unprofitable routes that they were unable to in the past.

In fact, our most recent indications are that we will in fact and have in fact started to see a leveling off, and I do not think we are going to continue to see those 9-percent levels. So clearly there was a surge. It was a delayed surge because they did not all go into effect immediately. But we believe that in fact it will level off and we support the conclusions of the study.

Senator **Pressler**. But really intellectually you could not say this is a continuation of a trend, when it went from 3.3 to—you rounded it off to 12 percent. I mean, that is four times faster. It is a great acceleration. It is a totally different ball game than you had before.

Mr. **Haseltine**. Unquestionably, when exit became possible, companies operating unprofitable lines took advantage of that for the first time. It is the first time they had the ability to take advantage of exit possibilities. We think that, as Chairman Taylor said, there has been a great shakeup and adjustment period within the industry, and we think that is now leveling off.

Senator **Pressler**. Well, now what trend are you talking about? First it was 3.3. Then after the rate of decline increased to 9.2 percent from 1982 to 1983, and 11.6 percent. It seems to me that trend is just the opposite. We are in a sharply increasing curve.

Mr. **Haseltine**. Because of the ability for the first time for intercity bus companies to in fact leave those unprofitable routes.

Senator **Pressler**. But you cannot say that that is a continuation of a trend. For example, they had that ability in 1982–83, and it is continuing to go up since then. So it is not just a pent-up desire. It is part of a trend, just the opposite of what this study concludes, as far as I can see.

Mr. **Haseltine**. I do not think it would have been realistic, Senator, to assume that the major intercity carriers could immediately, the day after the 1982 act went into effect, go through all the analyses on all of their routes to immediately in 1 day or 1 week or 1 month divest themselves of all unprofitable routes. Certainly that took some time, some realignment, some readjustment to corporate policies and trends—corporate policy, corporate thinking, corporate planning—among the carriers themselves.

And second, as I have said before, in many cases where they did file to abandon routes after the enactment of the 1982 act in many cases those abandonments did not go into effect immediately but only showed up 6 months or 1 year down the road afterward.

Senator **Pressler**. Well, let me say that I am concerned about the Government use of statistics to mislead us and to give a different picture, and I think that anybody who looks at even the statistics that are in your study would reach the opposite conclusion that you have reached or that your Department has reached.

Also, the real exit numbers on towns below 10,000 might be much more dramatic. We really do not have that and I would like to get that for the record.

In the time I have remaining, let me also ask is there any reason why UMTA section 18 funds could not be used to save some of the routes being abandoned?

Mr. **Haseltine.** First of all, Senator, let me make the same pledge that Chairman Taylor did in terms of providing more specific data for you and working with your staff, for the record. We would be pleased to do so.[1]

There is no reason why section 18 funds could not be used. The States themselves have discretion in terms of how section 18 funds are expended. There are, I think, with carryovers and current year appropriations, something like $108 million in section 18 funds available this year, and our best guess on what is likely to happen, given the Senate and House versions for 1986, is that there will be something in excess of $62 million available in section 18 funding in that fiscal year.

Senator **Pressler.** I have a couple more questions, but I just want to conclude this by saying I just do not believe that you can come here and say that things are going well, even with the numbers in your own study, and I think we have to be very careful in providing Congress and the public with studies such as this and concluding just the opposite of what your own numbers say.

I think as we dig more into those numbers we will find out that the real exit was much higher, especially in cities of under 10,000.

Senator **Packwood.** Senator Rockefeller.

Senator **Rockefeller.** Thank you, Mr. Chairman.

In your prepared statement, sir, you reflect on the fact that there have been some 3,500 applications of bus firms entering into the market and you also reflect there have been some 1,300 communities that had lost service as of September 1983.

Now my own, as I indicated before, experience in West Virginia is that we are getting no replacements at all, so with respect to these 1,300 or so communities that are getting replacements, are those all big cities? Is that happening in Texas or Maine, which you refer to in your testimony? What kind of communities are these replacements coming into in that they are not coming into our rural area?

Mr. **Haseltine.** In general, Senator, replacements are coming into a cross section of communities. Again, we would appreciate the opportunity of working in conjunction with the ICC staff and we can get you a listing of communities and we would be pleased to do so, sir.

Senator **Rockefeller.** Would you do that? I would like to have that.

[The following information was subsequently received for the record:]

Replacement Service in Maine and Texas

St. Croix Bus Service, based in Calais, Maine, began operation in early 1984, replacing Greyhound lines. It now serves the towns listed below. Points without population figures are very small, generally less than 500 persons. Ten points, nine with populations under 10,000, are served by the replacement carrier. Four of these were not served by the previous carrier.

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[1] See p. 37.

Location:	Population
Bangor	31,643
Ellsworth	5,179
Gouldsboro	
Milbridge [1]	465
Cherryfield	
Machias	1,368
Whiting [1]	
Pembroke	
Perry	
Calais	4,262

[1] These points were not served by the previous carrier.

Red River Bus Lines, based in Nocona, Texas began operation in March, 1984, replacing Trans Texas Trailways. It now serves the towns listed below. Points without population figures are very small, generally less than 500 persons. Twenty points, sixteen with population under 10,000, are being served by the replacement carrier.

Location:	Population
Paris, TX	25,498
Petty Junction	
Honey Grove	1,973
Windom	
Dodd City	
Bonham	7,338
Ector	573
Savoy	855
Bells	846
Sherman	30,413
Southmayde	
Whitesboro	3,197
Gainesville	14,081
Lindsey	1,408
Muenster	1,408
St. Jo	1,071
Nacona	
Ringgold	
Henrietta	3,149
Wichita Falls	94,201

Senator **Rockefeller**. You also indicated in your testimony, that this type of replacement can be found across the Nation, and you have just been talking about a Texas situation. I do not know whether that was a big city or a small city. Then later on you say, who are adjusting their service mix to fill a particular niche in the intercity bus network.

My question, I guess, is all of this more or less aimed at helping the cities at the expense of the rural areas, or will the figures that you supply me reveal that for the most part rural areas are getting very much left out of replacement bus line service, much less the loss of it in the first place?

Mr. **Haseltine**. Again, Senator, I cannot be too specific until I get the numbers to you, except to tell you that I am convinced they will show you a mix of various sizes of cities. For example, in the Texas case, the new entrant was a minibus service, and without knowing the city pairs right now I think I can say with some confidence that we are not running minibuses between large towns in Texas. Those are serving small communities, sir.

They may have a large community at one point or the other, but they are in place and providing service to small communities.

Senator ROCKEFELLER. If 1,300 replacements had been made by September of 1983, could you let me know in writing what the situation is now, 2 years later?

Mr. HASELTINE. Yes, sir, I would be pleased to.

[The following information was subsequently received for the record:]

NEW AND DISCONTINUED SERVICE

Unfortunately there is no readily available source of current data concerning communities that have lost service or received new or replacement service. DOT's report, "The Impact of Regulatory Reform on Intercity Bus Service," provided some such data through July 1984 for a sample of 12 states. This data was obtained by comparing appropriate issues of Russell's Guide, and noting which points have "dropped out" and which new points have appeared. We have used this method to provide information concerning the states of West Virginia and South Dakota for the period between December 1982 and October 1985. This information follows. We understand that the ICC is now collecting this data for all of the states.

SUMMARY FOR PERIOD BETWEEN DECEMBER 1982–OCTOBER 1985

West Virginia

78 points were discontinued—71 of these have populations of less than 10,000; 20 of these had agencies; 76 of these have no other continuing or replacement service; 2 still receive service by another carrier or route.

5 points are receiving new service—3 of these have populations of less than 10,000; 1 of these has an agency; 3 of these were already served by another carrier.

South Dakota

23 points were discontinued—All of these have populations of less than 10,000; 11 of these had agencies;[1] 18 of these have no other continuing or replacement service; 4 still receive service by another carrier or route; 1 point is receiving replacement service by a new carrier.

3 points are receiving new service—All of these have populations of less than 10,000; All of these have agencies.

WEST VIRGINIA, 1982–85 SERVICES LOSSES

Town	Population, 1980	Carrier in 1982	One-way trips/day	Agency	Service, 1985
Arnettsville		G	2	No	None.
Beckley	20,492	G	2	Yes	None.
Belle	1,621	G	1	No	None.
Big Creek		G	2	No	None.
Blair	600	T	2	No	None.
Bradley	1,200	G	2	No	None.
Buffalo	1,034	G	2	No	None.
Bunker Hill		G	2	No	None.
Burlington		G	(1)	Yes	None.
Cairo		G	2	No	None.
Chapmanville	1,164	T	4	No	None.
Charleston	63,968	T	2	Yes	Greyhound.
Chattaroy	1,200	C	2	No	None.
Clay	11,265	G	1	No	None.
Clendenin	1,373	G	4	No	None.
Clothier	600	T	2	No	None
Crum		C	2	No	None.
Danville	727	T	2	No	None.
Darksville		G	2	No	None.
Dickinson		G	1	No	None.

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[1] The presence of an agency indicates that the location has facilities for giving information and selling tickets. Locations that do not have agencies are generally "flag stops" with little or no demand for service.

WEST VIRGINIA, 1982–85 SERVICES LOSSES—Continued

Town	Population, 1980	Carrier in 1982	One-way trips/day	Agency	Service, 1985
Dunbar	9,285	G	2	No	None.
Dunlow		C	2	No	None.
Echo		C	2	No	None.
Ethel		T	2	No	None.
Fayetteville	2,366	G	2	No	None.
Gassaway	1,225	G	2	Yes	None.
Genoa		C	2	No	None.
Georgetown		G	2	No	None.
Gilbert	757	T	4	Yes	None.
Glenville	2,155	G	2	Yes	None.
Glenwood		GH	(1)	No	None.
Gormania		G	(1)	No	None.
Grantsville	788	G	(1)	No	None.
Harrisville	1,673	G	2	Yes	None.
Huntington	63,684	C, GH, T	2	Yes	Greyhound.
			(1)	Yes	Greyhound.
			4	Yes	Greyhound.
Jaeger	833	T	4	Yes	None.
Jeffrey	900	T	2	No	None.
July		G	1	No	None.
Kermit	705	C	2	Yes	None.
Keyser	6,569	G	(1)	No	None.
Laurel Point		G	2	No	None.
Lavalette	600	C	2	No	None.
Leon		G	2	Yes	None.
Logan	3,029	T	6	Yes	None.
Madison	3,228	T	2	No	None.
Maher		C	2	No	None.
Malden	950	G	1	No	None.
Man	1,333	T	4	No	None.
Marlowe	700	G	1	No	None.
Marmet	2,196	T	2	No	None.
Martinsburg	13,063	G	2	Yes	None.
Missouri Branch		C	2	No	None.
Mount Hope	1,849	G	2	No	None.
Mount Storm		G	(1)	Yes	None.
Naugatuck		C	2	No	None.
Nolan		C	2	No	None.
Oak Hill	7,120	G	2	Yes	None.
Point Pleasant		GH, G	(1)	No	None.
			4	No	None.
Racine	650	G, T	2	No	None.
			2	No	None.
Radnor		C	2	No	None.
Rand	2,500	G	1	No	None.
Ranger Junction		T	4	No	None.
Ravenswood	4,126	G	2	No	None.
Ridgeway		G	2	No	None
Rivesville		G	2	No	None.
Romney	2,094	G	(1)	No	None.
Salt Rock	900	T	4	No	None.
Smilhtown		G	(1)	No	None.
Seth	650	G	2	No	None.
South Charleston	15,968	G	2	No	None.
Spencer	2,799	G	2	Yes	None.
St. Albans	12,402	G	4	Yes	None.
Walton		G	2	No	None.
Wayne	1,495	C	2	No	None.
West Hamlin	643	T	4	No	None.
Whitesville	689	G	2	No	None.
Williamson	5,219	C	2	Yes	None.

WEST VIRGINIA, 1982-85 SERVICES LOSSES—Continued

Town	Population, 1980	Carrier in 1982	One-way trips/day	Agency	Service, 1985
Witcher		G	1	No	None.

[1] Denotes the community was served by less than 5 1-way trips per week.

Note: G—Greyhound; T—Trailways; C—Cardinal; GH—Garfield Heights.

WEST VIRGINIA, 1982-85 NEW SERVICE

Town	Population, 1980	Carrier in 1985	One-Way trips/day	Agency	Comment, 1985
Henderson		G	2	No	New.
Kanawha Airport (Charleston).	63,968	G	1	No	New.
Lewisburg	3,065	IBL	2	No	New.[1]
Wheeling	43,070	T	5	Yes	New.[1]
White Sulfur Springs	3,371	IBL	2	No	New.[1]

[1] Also served by Greyhound.

Note: G—Greyhound; IBL—Intercity Bus Line; T—Trailways.

SOUTH DAKOTA, 1982-85 SERVICE LOSSES

Town	Population, 1980	Carrier in 1982	One-Way trips/day	Agency	Service, 1985
Big Stone City	672	JR	2	Yes	G.[1]
Black Hawk	400	T	3	No	None.
Clear Lake	1,310	JR	2	Yes	ZL.[2]
Cluster	1,830	T	3	No	None.
Cluster State Hospital		T	2	No	None.
Edgemont	1,468	T	2	Yes	None.
Herreid	570	NS	2	Yes	None.
Hill City	535	T	3	Yes	None.
Hot Springs	4,742	T	2	Yes	A&BH.[3]
Irene	523	JR	2	Yes	None.
Keystone Junction	295	T	2	No	None.
Minnekanta		T	2	No	None.
Mobridge	4,174	NS	2	No	JR.[4]
Mound City		NS	2	No	None.
Piedmont	300	T	2	No	None.
Pringle		T	2	No	None.
Pumpkin Center		JR	2	Yes	JR.[4]
Selby	884	NS	2	No	None.
Sisseton	2,789	FS	2	Yes	None.
Tunerville		ZL	2	No	None.
Volin		JR	2	Yes	None.
Wakonda	383	JR	2	Yes	None.
Worthing	388	G	2	No	None.

[1] Still served by Greyhound Lines.
[2] New service by Zephyr Lines on different route.
[3] New service by Arrow & Black Hills Stage.
[4] New service by Jack Rabbit.

Note: G—Greyhound; T—Trailways; JR—Jack Rabbit; A&BH—Arrow & Black Hills Stage; ZL—Zephyr Lines; NS—Nodak Stages; FS—Four Star.

SOUTH DAKOTA, 1982-85 NEW AND REPLACEMENT SERVICE

Town	Population, 1980	Carrier in 1985	One-Way trips/day	Agency	Comment, 1985
Centerville	892	JR	2	Yes	New.
Chancellor		JR	2	Yes	New.
Clear Lake	1,310	ZL	2	Yes	[1]
Lennox	1,827	JR	2	Yes	New.

[1] Formerly served by Jack Rabbit.

Note: JR—Jack Rabbit; ZL—Zephyr Lines.

Senator **Rockefeller**. Could you also reflect on the fact that since enactment of the 1982 Bus Regulation Reform Act, the number of interstate charter companies has increased enormously, and yet from 1980 to 1985, the number of inspections has dropped from 6,000 to 1,000. It is very difficult for both Federal and State people.

That is the most difficult of all bus inspections to make. We have had some very sad experiences with that recently in West Virginia. Are you concerned about the effect of that sharp increase, accompanied by the decline of inspectors and the consequences for safety in the near-term future?

Mr. **Haseltine**. First, Senator, the number of inspectors available has remained fairly constant and it has been fairly constant and quite modest, I might add. We have major increases in State inspectors and much of what BMCS has been doing for the last year is training the increased numbers of inspectors at the State level. And we find it much more cost effective to have State enforcement personnel who are trained in motor carrier inspection, who have already, in many cases or in most cases intrastate motor carrier inspection responsibilities.

We find it much more cost effective and much simpler for those officers to perform inspection, on the road inspection functions, than for Federal employees, a small cadre of which are scattered throughout the country. There is no question, Senator, but that BMCS inspectors, were we to quadruple the number of them, would not be in a position to physically inspect every intercity bus.

Senator **Rockefeller**. Can I just clarify one or two points here? My understanding is that since 1980, the number of safety inspections—maybe I should have said inspections as opposed to inspectors—has dropped from 6,000 per year in 1980 to 1,000 per year in 1985. Now what you are indicating to me is that that is a relative constant, and that the difference is being made up by increased inspections being made at the State level by people paid by the State who you all are training?

Mr. **Haseltine**. BMCS is spending much of its time training a cadre of now probably 1,500 new State-level motor carrier enforcement inspectors.

Senator **Rockefeller**. Would you provide the West Virginia figures for me on that, sir?

Mr. **Haseltine**. Yes, sir, I will supply all the figures because I am not familiar with the 1980 level that you alluded to.

Senator **Rockefeller**. Thank you.

[The following information was subsequently received for the record:]

Training of West Virginia Enforcement Personnel

During fiscal year 1984, 43 West Virginia state enforcement officers received BMCS safety training in roadside inspection procedures. Twenty-one of these now are regularly assigned inspection duties and spend approximately 10 percent of their time conducting roadside inspections.

Senator Packwood. Any further questions?

Senator Pressler. Mr. Chairman, I would like to just follow-up to ask you to submit for the record an analysis of that page of the executive summary, how that conclusion could possibly be stated, and also the real exit from towns of under 10,000 if you could. Would that be agreeable?

Mr. Haseltine. Yes, Senator, we would be pleased to.

[The following information was subsequently received for the record:]

Trends in Service

The paragraph referred to in the executive summary of the "Impact of Regulatory Reform on Intercity Bus Service", discusses two sets of data for the twelve states examined in the report. The first of these is total bus service (as measured by weekly departures) for the period from 1975 to 1984. The report found this declined at an average rate of 4.8 percent between 1975 and 1982, prior to the Act. Following passage of the Act, service declined 16 percent between 1982 and 1983 but only 4 percent from 1983 to 1984. However, the decline in the second set of data, the number of communities receiving bus service, shows a slightly different trend. Between 1975 and 1983 the average annual rate of decline was 3.3 percent. Between 1982 and 1983, following the Act, the rate increased to 9.2 percent and between 1983 and 1984 to 11.6 percent.

In both instances the trend of service drops was well established before the Bus Act was passed in 1982. In both instances the actual rate of service drops increased immediately after the Act was passed. The report states, on pages 24–26, that the "very sharp drop in the first year following the Act suggests that regulation held some carriers in service from which they wished to withdraw," but "once this 'pent up' demand to withdraw from scheduled service was satisfied, however, the annual rate of decline in departures returned to slightly less than its pre-Bus Act level". The decline in the number of communities receiving service did not return to the levels experienced before the Act as quickly as did total bus service. This is to be expected considering the more complex process of both company planning as well as state public utility commission, and occasionally ICC procedures, that must be followed for dropping routes, as opposed to simple schedule changes.

It should be noted that the sharp declines in both total bus service and communities served appear to have abated. This is apparent for total service in the report. We believe that exit data now being compiled by the ICC from published industry figures, as requested by Senator Pressler, will show that, in the aggregate, we are now also seeing a much lower rate of decline in number of communities served. There will, of course, be variations in these rates from location to location as carriers drop routes or go out of business, or as new carriers begin operations or expand.

Senator Pressler. Let me also ask this. This question I have addressed to both DOT and the ICC. Not to jump the gun, but part of the ABA's testimony will deal with what it sees as lax enforcement of the minimum insurance requirements and the impending dislocation that such laxity could create when the premiums increase.

Is the Department or the Commission aware of carriers who are operating without adequate insurance? If so, how many are there and what action has DOT and the ICC taken against these carriers?

Mr. **Haseltine**. Senator, we are unaware of any carriers operating without insurance. In the event that we become aware of them, the BMCS immediately takes enforcement action and they either get insurance or cease to operate. We have, Senator, begun to put in process right now improved computer systems which when fully implemented will permit any inspector, whether it be State or Federal, during the course of a roadside inspection from within the patrol vehicle, to actually query by radio computer link the records of the motor carrier being inspected, including insurance records.

Senator **Pressler**. And if I could submit I know the ICC has already left, but if we could submit that question, the same question to them for the record, I would appreciate it.

Finally, what is your reaction to the ABA and the UBOA proposals to establish a motor carrier administration with an intercity bus division within DOT?

Mr. **Haseltine**. We frankly fail to see the need for a separate motor carrier administration. As you may know, Senator, we have recently reorganized and upgraded within the Federal Highway Administration, the entire motor carrier function of the Bureau of Motor Carrier Safety. We have created an Associate Administrator for Motor Carriers. We have for the first time changed the reporting structure so that BMCS inspectors in the field no longer report through highway division and regional engineers, but rather report directly to Washington and people working in the motor carrier field.

We believe that many of the past problems that have been noted in the motor carrier enforcement area will in fact be successfully addressed by this reorganization. We find that the creation of a new motor carrier administration would create additional administrative costs that we believe are not necessary and which would be better directed toward enforcement and the safety responsibilities of BMCS.

Senator **Packwood**. Senator Rockefeller.

Senator **Rockefeller**. One point of clarification, Mr. Chairman. The information I was just given, in West Virginia between 1983 and 1985, according to our information, inspection for trucks and buses together dropped from 12,920 to 7,192, that being well over a 5,000 drop in 2 years in the number of inspections.

Now, we do not have the number of bus inspections broken out of that. I would like to know what that decrease or what that figure is. I can give you the aggregate, but now I would like to know what the bus figures are, if you will supply those to me.

Mr. **Haseltine**. Yes, sir, I would be glad to, Senator.

[The following information was subsequently received for the record:]

West Virginia Enforcement

We understand that in 1983, West Virginia enforcement personnel did 12,930 truck and bus inspections. In fiscal year 1985 West Virginia received a $102,843 Motor Carrier Safety Assistance Program (MCSAP) implementation grant and did 8,170 roadside inspections of trucks. In addition, 461 buses were inspected at terminal sites, in order not to inconvenience passengers. State officials inform us that the pre-MCSAP inspection was a 10 or 15 minute process that did not involve such items as a review of the driver's record of duty status or an in-depth hazardous materials inspection. The fiscal year 1985 inspections are more comprehensive and take about 35 minutes.

It should be noted that the State plans to institute roadside inspections for buses in 1986. They believe that the payoff for providing safe buses outweighs the possible passenger inconvenience factor.

Senator **PACKWOOD**. Mr. Secretary, thank you.

Mr. **HASELTINE**. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Administration's views on the economic regulation of household goods carriers and motor carriers of passengers.

We believe that the results of the legislative reforms affecting household goods carriers and buses have been very positive. In my statement, I would like to highlight some of the results of reform in both of these segments of the motor carrier industry, beginning with household goods carriers.

HOUSEHOLD GOODS CARRIERS

For the past five years, household goods carriers have been operating in the less regulated, more competitive environment provided by the reforms of the Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980. I am pleased to report that, as the Department has testified in previous years, reform is working well in the household goods sector of th trucking industry.

The last five years have provided many challenges to household goods movers, but as a group they have responded impressively to these challenges. Few segments of transportation were as heavily regulated as these carriers were in 1979, and the 1980 reforms suddenly thrust them into a whole new competitive environment. However, during the past five years, household goods carriers have taken advantage of these reforms to provide shippers with new and improved services, as well as to offer more competitive prices. Many new services, such as binding estimates and guaranteed pickup and delivery, have proven especially popular with consumers. In addition, customer complaint levels have fallen sharply since 1980.

Even during some difficult economic times, carriers, were providing better service to consumers than they were during the days of strict, old-fashioned regulation. As the economy improved, the motor carrier industry as a whole returned to profitability, with household goods carriers leading the way. In 1984, this segment of the trucking industry enjoyed its best year since 1979, earning an average return on equity of over 20 percent, compared to a slightly greater than 13 percent return on equity for motor carriers as a whole.

Household goods carrier innovation has taken many forms. Most visible has been the proliferation of price and service options for shippers. Some of these—such as binding estimates, pickup and delivery guarantees, full value replacement cost insurance, and guaranteed satisfaction with each component of the moving service—deal with the basics of moving. Other options have expanded the overall range of services provided by a carrier. These "extras" may include a broad range of relocation services to help customers settle in to their new environment once their personal possessions arrive.

With the passage of time, innovative operating methods are also being developed to respond to the needs of a more competitive marketplace. For example, some carriers have argued that offering binding estimates (guaranteed prices) runs the risk that a carrier may accept unprofitable business. We realize the importance of good costing procedures to *all* motor carriers, including household goods movers.

Recently, one major van line has come up with a very effective method for estimating shipping costs accurately. With the aid of a small portable computer equipped with an optical scanning system, an estimator can quickly survey the consumer's household goods to be moved, enter a list of all items to be moved, and produce a printed inventory that is accompanied by a total price offer for the move. All this can be accomplished during one visit to the customer, and the new system is said to produce estimates within a two-and-a-half percent margin for error (said to be far better than industry average accuracy in estimating). This sounds like a very good deal for both the van line and its customers and is the type of innovation the 1980 reforms were ment to encourage.

Perhaps the most vivid way to summarize the benefits that have resulted from regulatory reform of household goods regulation would be to consider a brief comparison of a typical household goods move in 1979 with one in 1985. In the former year, Mr. and Mrs. John Doe called a few carriers to get estimates of what it would cost to move their family possessions to their new home. They received estimates ranging from $1200 to $1700. Not realizing that all of the carriers were legally obligated to collect total charges based on the actual weight of their shipment—and that the rate per hundredweight was actually the same for each of the carriers they had contacted—the Doe's chose the carrier offering the $1200 estimate.

They watched their furniture be loaded into the moving van and then drove off to their new location. Mrs. Doe carefully obtained a certified check for the estimated amount of their moving costs, since cash or certified check was the required form of payment.

On Saturday morning, their van arrived at their new home. Much to the Doe family surprise, the actual bill for their move came to $1,700. The carrier informed them that they could have their furniture unloaded as soon as they provided enough cash or an additional certified check to cover 110 percent of the original estimate; payment of the balance could be deferred for up to thirty days. Although this provision of the Interstate Commerce Commission's regulations made it possible for the Doe's to get their furniture off the truck, they were nevertheless dismayed to discover that their careful comparison shopping for the best available rate had not actually saved them any money.

Let us now look at the Doe family's next move, in 1985. Mrs. Doe, once again, consults several van lines for estimates of the cost of their move. However, this time three van lines offer her binding estimates—guaranteed prices for the move. She also decides to arrange for guaranteed pickup and delivery service and full value replacement insurance for her family's goods. Once again, the Doe family drives off to its new home.

The van again arrives on a Saturday morning. Remembering 1979, Mrs. Doe stands anxiously at the front door, wondering if the move is going to cost a lot more than she had planned. The foreman of the moving crew assures her not to worry—the carrier takes credit cards and approved personal checks. As it turns out, there are no surprises—the carrier accepts the Doe's check for the exact amount of the binding estimate.

While delivery has occurred on schedule, Mrs. Doe is nonetheless glad that she arranged for full value insurance: although all of their furniture arrives in perfect condition, the family's stereo components have been lost in transit. Thanks to the extra level of insurance coverage she purchased, a check for the full cost of a new stereo system will be sent to the Doe family—not just compensation based on the depreciated value of their old stereo or on a fixed number of cents per pound of its weight. All things considered, the 1985 move was a far more satisfactory experience than the 1979 move.

In summary, Mr. Chairman, we believe that regulatory reform has worked well in the household goods moving industry. Carriers have become more innovative and efficient, and consumers are benefiting from a wide variety of new price and service options. The time has come to remove additional regulatory burdens, and household goods carriers are included in the Administration's legislative proposals to provide further economic deregulation of motor carriers of property and freight forwarders.

MOTOR CARRIERS OF PASSENGERS

In the three years since the implementation of the Bus Regulatory Reform Act of 1982 (BRRA) in November 1982, the intercity bus industry has utilized the provisions of the Act to respond to a rapidly changing market environment. The regular route (schedule) segment of the industry has experienced significant new intermodal competition from the expanding reduced rate airlines as well as the more traditional competition of the automobile. Provisions of the Act have permitted rapid adjustments in fares and service to respond to changing demand. The entry provisions of the Act are permitting competition in areas previously served by a single carrier. They also are permitting new entrants to provide service more precisely tuned to the realities of present day demand than that traditionally provided by the older carriers now exiting some markets. The charter bus and tour segment of the industry is expanding at a rate which would have been unimaginable prior to regulatory reform. Entry into the regular route segment is also occurring at a rate far in excess of that of the period preceding the BRRA.

ENTRY

Between implementation of the Act and the end of 1984, over 3,500 applications to the ICC for operating authority were published in the *Federal Register* and, subsequently, the *ICC Register*. Some 554 of these involved regular route authority. In the years 1980–1982, by comparison, regular route applications averaged only 78 per year. Since implementation of the Act, Charter and Special Operations applications have averaged 1408 per year, as contrasted with an average of 457 in the 1980–1982 period.

Regular route entry to serve specialized markets has continued to be very active. As many as 168 applications to serve airports and particular recreational communities (such as Atlantic City and, to some degree, Las Vegas) have been published through December 1984. Applications continue to be published to provide service where previous carriers have withdrawn from particular routes. Where demand exists, new services tailored to the needs of the specific area are coming into being. For example, in northern Maine a new carrier operates a mini-bus over a 150 mile rural route previously operated by a national carrier. Similarly, in Texas, a new mini-bus operator has begun operating over the former route of another national carrier. This type of replacement can be found across the nation. The new entrants typically are small business entrepreneurs who are adjusting their service mix to fill a particular niche in the intercity bus network.

In addition to entry by small entrepreneurs, some major transfers of routes have taken place in recent months. Extensive route systems from California into the Pacific Northwest and in Ohio have seen the withdrawal of a national carrier and the assumption of these routes by independently owned regional affiliates of the carrier.

A national carrier has recently begun a franchising system through which it franchises its trademark to independent carriers and provides them with assistance, training, and terminal access. Although in existence for only several months, this system has seen new routes begun in Tennessee, Mississippi, and Louisiana. Another franchisee has assumed operation of a 250 mile route in the Northwest formerly operated by a national carrier.

EXIT

Exit from the scheduled service segment of the intercity bus industry has been occurring for several decades. Beginning in the middle 1950's and only interrupted by a modest rise in the late 1960's, there has been a continuous decline in the demand for scheduled intercity bus service. Given the economic realities of this long term decline, it is not surprising that exit from communities, routes, and/or from the industry has been the norm.

Information on exit has been somewhat limited. Two primary sources have been data derived through the carrier portion of a joint DOT–ICC survey of terminals conducted in mid-1983 and a DOT sponsored Indiana University study of regulatory reform issued in September 1984. In the DOT–ICC survey, carriers were asked to identify those service points deleted from service or proposed for deletion since November 19, 1982. After adjustment for duplication, it was estimated that some 1,300 communities had been eliminated or were proposed to be eliminated from service by September 1983.

The Indiana University report also examined the impact of changes under the BRRA upon small community service, rural communities, and the elderly. The authors found that terminations did not fall solely upon the smallest communities. It did not appear that the discontinuances had fallen disproportionately upon the elderly or the poor. It was found that the percentage of elderly residents was lowest and average median income was highest in communities that lost service in the 1982–84 period. The Indiana University study further demonstrated that the post-regulatory reform decline in service was a continuation of a trend that had begun well before 1975, the study's initial data time point. After the brief rise upon implementation of the BRRA in the number of applications and appeals to exit from those operations held in place by intrastate regulation, there was evidence of a return to a rate of decline equal to or less than pre-reform rates.

Having considered the magnitude of exit, it is important to differentiate between residual service points with minimal utility and points that were receiving bona fide service. Many points were carried on schedules for years without any traffic having been received or discharged. Often these points were only maintained through the negative incentive of the time, money, and effort necessary to attempt discontinuance under a particular state regulatory scheme. Some of these service points were scheduled time-points, while others were simple flag-stops, highway stops, or discharge-only points. The scheduled time-point is a stop that is indicated on a published timetable as having a specific time when the bus is due to arrive at the point to pick up and discharge passengers. Flag-stops are points where no specific arrival time is given or an estimated time for passing the point is provided. In the case of a flag-stop, it is necessary for the prospective passenger to signal ("flag") the bus in order to have it stop. The highway stop is a stop established on a main highway near a turnoff into a particular community. Such highway stops are used to provide a limited level of service when the demand for service does not warrant the delay of running into the community. The discharge-only point is a point where the bus will stop only if there is someone to discharge at the point.

The most striking conclusion to be derived from an examination of exit is that the decline in service experienced after regulatory reform does not appear to be a product of that reform but the continuation of a long trend. This trend does not seem to have been significantly altered by regulatory reform, with the exception of the large but apparently temporary surge in exit applications engendered by permitting carriers to appeal state denial of exit on intrastate segments of interstate routes. This permitted carriers to discontinue many points and/or routes that had experienced limited service and effectively nonexistent demand for many years.

INTERSTATE AND INTRASTATE FARES

The implementation of the Act has brought about a large number of independent tariff actions and appeals to the ICC to overrule state action on rate increases. The most prominent of the independent tariff actions is the filing of the national mileage tariffs. Filings have been made including time- and demand-sensitive fares available only during certain periods of the day or certain days of the week. The elimination of antitrust immunity for collective ratemaking, other than for general rate increases, has encouraged fare competition. A number of approaches to competitive pricing are being tried by various carriers. In short, the post-BRRA period is experiencing a degree of fare competition not seen prior to passage of the Act. This emergence of new fare competition strongly resembles the experience of the airline industry after the Airline Deregulation Act of 1978. New entrant airlines featured low fares as their primary means of exploiting their cost advantage over incumbent carriers. In turn, the incumbents usually responded with matching fare reductions.

An examination of the changes in a sample of interstate fares indicates that 17 percent of the interstate fares actually declined between 1980 and 1984. Declines as great as 30 percent occurred in the New York-Atlantic City, and New York-Reading markets as an apparent result of increased intramodal competition. There does not appear to have been any massive wave of fare increases as a result of regulatory reform.

Intrastate fares have increased, on average, at approximately twice the interstate rate. However, these increases are part of the equalization process envisioned under the Act. The difference between intrastate and interstate fares (which were more than 30 percent higher than intrastate fares in 1980) is gradually decreasing. Most intrastate fares are still somewhat less than equivalent interstate fares, but the great differencial and consequent significant subsidization of intrastate traffic by interstate traffic has been greatly reduced. The average differential in a 1980/1984 sample is about 15 percent.

FINANCIAL HEALTH

The intercity bus industry appears to be in a period of retrenchment, as companies seek to cope with declining demand and more intense competition from other modes. The intercity bus industry has recently experienced significantly increased competition from reduced-rate airlines. This competition is occurring on routes in the 100-400 mile range where, until recently, the bus industry had major pricing advantages to offset the time advantages of existing air carriers.

A few Class I companies have found new markets that have enabled them to realign and expand service. Most, however, have lost passenger miles in excess of their reductions in bus miles. The phenomena of national carriers shifting routes to independently owned affiliates and franchising are examples of these carriers' efforts to adjust to current market realities. Without the freedoms provided by the Act these necessary realignments would have been significantly more difficult, if not impossible, to achieve in a timely manner.

INSURANCE

The intercity bus industry is now suffering the same insurance problems as the trucking industry and, to a large extent, the entire transportation industry. The Department testified at the September oversight hearings on the Motor Carrier Act of 1980 that the problem of steep increases in insurance premiums, as well as the availability of insurance coverage, was neither unique to the trucking industry nor was it caused by deregulation. The same is true of insurance for intercity buses. It is a result of a number of factors which have hit the commercial liability insurance industry and created capacity and pricing problems for all property and casualty lines. It is a serious problem; we are aware of it; and we are exploring what, if anything, can be done about it.

CONCLUSION

In conclusion, the BRRA has fostered fare and service competition in an industry where neither was previously encouraged. Sufficient flexibility for entry, exit, and fare experimentation came after a decade of declining demand for regular route service. There are substantial indications that a basic restructuring of the intercity bus industry has begun in response to the changing market for such services. In the absence of the BRRA it is likely, considering the financial condition of much of the industry, that the economic burdens imposed by the old regulatory scheme would have made continued operation very difficult for many of the regular route carriers in operation today.

That concludes my prepared remarks, Mr. Chairman. I will now be glad to answer any questions that you or other Members of the Committee may have.

Senator **Packwood**. Now we have Mr. John Allen, Chairman of the Committee on Transportation of the National Association of Regulatory Utility Commissioners. Your statement will be in the record in its entirety, Mr. Allen.

STATEMENT OF JOHN M. ALLEN, CHAIRMAN, COMMITTEE ON TRANSPORTATION, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. **Allen**. Thank you, sir. Mr. Chairman, distinguished members of the subcommittee, my name is John Allen and I am a commissioner with the Arkansas Transportation Commission. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the NARUC. Since many NARUC members regulate intrastate bus operations, we greatly appreciate your invitation to address the subcommittee on oversight of the Bus Regulatory Reform Act of 1982.

The NARUC is especially concerned with the sweeping preemptive interpretation the ICC is giving to the Bus Regulatory Reform Act in the areas of entry, exit and rates. The Bus Act only provides for minimal preemption of State regulation relating to intrastate bus operations on an interstate route by motor carrier.

I will briefly discuss each of these issues separately and explain the profound impact they have on the States. My written testimony, submitted for the record, contains a more in-depth discussion.

New service or entry. The Bus Regulatory Reform Act provides that if a carrier has interstate authority the carrier can be granted authority from the ICC for intrastate operations as part of its interstate operations if the carrier is fit, willing and able to provide the service and it is not against the public interest. The ICC has been interpreting the act as not requiring carriers who apply for intrastate authority to actually operate or to prove that they intend to operate a single bus over the interstate routes authorized in the interstate authority.

We believe that this interpretation flies in the face of congressional intent. The legislative history of the act clearly reveals that it was not intended to constitute a mechanism by which bus companies could completely evade State regulation of intrastate entry. Clearly the act indicates that this section was to be a remedy for the so-called closed door problem existing in some intrastate markets prior to the enactment of the Bus Regulatory Reform Act.

Instead of the narrow construction required of preemptive legislation, the ICC acknowledges that under its reading of the act a carrier may enter intrastate markets with little regulatory difficulty at either the State or Federal level, even if the carrier has no intention or makes no attempt to provide any interstate service. Given that the carrier can devise any interstate pattern it wishes in order to obtain from the ICC the intrastate authority it actually desires, the ICC policy will lead over time to a virtual preemption of all State authority to regulate new entry into intrastate bus markets.

A legislative solution to these problems must be enacted to prevent effective State regulation of intrastate entry from coming to an end. The NARUC supports legislation such as section 321 of H.R. 3129 which is currently under consideration in the House Committee on Public Works and Transportation. This section would amend the Bus Regulatory Reform Act requiring carriers to actually run the interstate routes for which they seek intrastate authority.

Exit or abandonment of routes. Turning to the exit provisions of the act, the NARUC is troubled with the ICC's unduly preemptive action under the act. In today's deregulatory environment, the ICC's track record of reversing appeals in the area of service abandonments has been extremely permissive. Thus, in spite of the fact that a State regulatory agency may have already conducted a thorough examination of the matter the carrier can easily abandon vital service to small towns and cities by appealing the question to the Federal agency.

Not only does this place the State commissions in a subservient position to the ICC, but it provides the carriers with a running start against anyone who would attempt to question the need for the service abandonment. The NARUC sincerely doubts that the thousands of small towns and cities critically dependent upon bus transportation will be able to defend their interests if the ICC is permitted to preempt State jurisdiction in such a broad manner.

In order to protect the American public from unreasonable fare increases as well as a general decline in the quantity and quality of bus transportation services, the NARUC believes that a legislative solution is necessary to curtail the sweeping Federal preemption by the ICC of State abandonment decisions.

A prior notice amendment may be an ideal solution to the abandonment problem. This would require bus companies to give advance notice of abandonment to the communities they serve so that other alternatives may be explored.

In conclusion, we respectfully urge this subcommittee to examine the broad construction given to the act by the ICC which is effectively terminating the State regulation of intrastate bus operations. I want to again emphasize that the Bus Regulatory Reform Act did not completely deregulate the bus industry and that preemption of State authority was only provided for under limited circumstances. The ICC must not be permitted to circumvent the intent of the act.

Thank you for this opportunity to present these views, and I will be happy to try to answer any questions you might have.

Senator Packwood. Can you comment on Chairman Taylor's statement that what they were finding was case after case of State utility commissions significantly underpricing intrastate bus service, even though it was the same bus and the same costs to operate in comparison with what the ICC was finding?

Mr. Allen. Mr. Chairman, I heard his statement but I can only talk to you about our particular State, where I heard our rate cases. And it seemed to me that about every 2 years we were hearing from the bus companies about a general rate increase, where the ICC, it seemed, on a pretty regular basis, the bus companies would go to them like every 6 months and would receive a fairly nice fare increase.

I asked some of the bus people why they waited so long to come to our particular State, and I found out it happens in other States, and they said that we made them do their homework. They had to really put on a rate case when they came before a State and that it was easier to go before the ICC and get these increases on a faster basis.

It seems to me that possibly the ICC was too liberal in granting the increases, and I think in some of the States, including our State of Arkansas, we probably were a little slow in granting the increases.

Senator Packwood. Separate the speed for a moment. Do you also mean that the ICC was too generous in the rate increases they were giving and they were not accurately assessing the costs, whereas the States were more accurately looking into costs and giving rates commensurate therewith.

Mr. Allen. That was what I had heard in some discussions from some of the bus people that was, I would say, off the record.

Senator Packwood. In your experience, let us be serious. We are all aware that for years we used long distance telephone to provide subsidies to rural telephone service. We are also aware that we used long haul interstate bus service to subsidize intrastate service. That was common and we all acknowledged that. And no one quarreled with it.

We have moved away from that philosophy and I am curious now if in moving away from it the allegations of the Interstate Commerce Commission are accurate, that local regulatory commissions, State regulatory commissions, are still attempting to impose rates or would like to impose rates lower than cost on the assumption that interstate rates will pick up the difference.

Mr. Allen. I think the feeling among the States is that there is not really much use in worrying that much about it now because with the decisions of the ICC, even if we deny, it will be overturned when it goes before the Commission.

Senator Packwood One last quick question. Do you think that intrastate service between small towns should pay its own way?

Mr. Allen. Well, it is according to whether you are talking about a regulated environment or a deregulated one. In a deregulated environment, yes; sir, they should, but under the old system my understanding was that they had the cream of the routes, the good business, and with that they expected to take some of the routes that were not that profitable.

Senator **Packwood**. Well, we are moving at the moment toward a deregulated system. Is it your judgment that under that system routes between small towns or from a small town to a big town should be abandoned if it does not pay its own way, or if not abandoned moving from a large bus to a minibus or something that is scaling down or you are cutting back on the number of trips?

In any event, do you think under the present environment it should pay its own way? If the answer is yes, it should, and that means loss of service, we ought to go back to regulation and having lucrative routes subsidize unprofitable routes. I am just curious about your personal opinion.

Mr. **Allen**. My personal opinion is that I think we as State regulatory commissions should have allowed more latitude with the bus companies. It is foolish to run a big bus, as expensive as they are, over routes that only carry a few passengers. I think we should have allowed more economies for the bus companies, and yes there were some routes—I do not want to argue—that should have been abandoned, but not totally.

Senator **Packwood**. What do you mean, "abandoned, but not totally"?

Mr. **Allen**. What I mean by totally is last bus. We have some areas where there is no bus service at all. We did have some areas where they had several routes through there daily and there really probably was not a need for all of those schedules.

Senator **Packwood**. Is there any town of any size that should not have any service, or should every town of any size have some service to that town?

Mr. **Allen**. I think the people in those towns really would have to answer that. I would say that if you lived in a small rural community, yes, you would love to have it.

Senator **Packwood**. I understand that. You are on the commission in Arkansas?

Mr. **Allen**. Yes, sir.

Senator **Packwood**. What is your view as a commissioner? Should every town or let us say every incorporated town have some bus service, regardless of whether or not it has to operate at a substantial loss?

Mr. **Allen**. No, sir, not under the system we have today, no.

Senator **Packwood**. But should it under any system?

Mr. **Allen**. Well, I thought it worked fairly well back in years past.

Senator **Packwood**. So you like basically the cross subsidy system where all small towns, every small town, is guaranteed some service regardless of whether or not the service makes a profit?

Mr. **Allen**. Yes, sir.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Let me ask some questions about the sweeping exemption or the sweeping preemption that seems to occur of the State public utilities commissioners, whatever they are called in the different States, by the ICC. For example, the Rapid City to Hot Springs bus line, if the State PUC in South Dakota should rule it cannot be abandoned, probably the ICC, or based on recent history, the ICC always reverses.

Also, there are a number of other examples in other States. I know that the NARUC is concerned with the sweeping preemption by the ICC of State abandonment decisions resulting in loss of bus service to small rural communities. Basically there is no State authority in this area the way things have been operating lately; is that not correct?

Mr. **Allen**. Yes, sir.

Senator **Pressler**. Would you expand on that a bit?

Mr. **Allen**. Well, it seems that most States have said heck, what is the use? There is no need in pursuing these matters because you build your case and it goes to the ICC and it is overturned. And I think there is a lot of commissions across the country that do have that feeling, that it is really no use to go to the time and effort to try to preserve some of these routes.

Senator **Pressler**. It must be very demoralizing to the local commissions and an exercise in futility. Can you comment on that a bit?

Mr. **Allen**. Well, only in our State. We have had two cases where it was last bus service, and we were asked to hold the hearings. We have held the hearings out in the rural area where the service was being discontinued. We found in a lot of the rural communities maybe the ridership was not that large, but the express business was also a very strong concern for these small communities because the garages got their parts or the little floral shop got their flowers.

There was the express delivery and they really did not want to give up on that service. I wish they had ridden the buses more. I think it probably would have made our cases stronger, but the rural areas of Arkansas want to keep their bus service.

Senator **Pressler**. I think your testimony is excellent and this preemption by the ICC of all the decisions that is almost unanimous lately, really I think harms State-Federal relations because all of them could not be wrong, in my view.

Thank you.

Senator **Packwood**. Senator Rockefeller.

Senator **Rockefeller**. Thank you, Mr. Chairman.

Mr. Allen, in your testimony you say in today's deregulatory environment, the ICC's track record of reversing appeals in the area of service abandonments has been extremely permissive. And you paint a fairly gloomy picture of public service commissions. I am very well familiar with them, having been a Governor for 8 years in a State similar to yours, and I have watched public service commissions having to go through the hard work, make the tough decisions, take all the flak, try to do what is right, and usually end up increasing, you know, rate of return on investment for utilities of all sorts.

Between 1983 and 1985 the ICC has granted 40 of the petitions which the bus companies appealed and wanted. They granted 40, the ICC did. They dismissed three on a procedural basis, and there are three cases pending. Therefore, out of the 46 total, there are three pending and all the rest which came on up from the public service commissions, et cetera, have been dismissed by the ICC.

You used the word "in today's deregulatory environment" in your testimony. I take it that you more or less mean that the ICC is bound and determined to grant what it is that bus companies want, irrespective of the effect on local communities. Or am I putting words in your mouth, sir?

Mr. ALLEN. No; I would say that seems to be a very accurate statement that you have made and I would agree with it, yes, sir.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator PACKWOOD, Any other questions?

[No response.]

Senator PACKWOOD. Commissioner, thank you for coming. We appreciate it.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

INTRODUCTION

Mr. Chairman and distinguished members of the subcommittee, my name is John Allen and I am a commissioner with the Arkansas Transportation Commission. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today from the NARUC are Karen L. Hochstein, Director of Congressional Relations and Phyllis B. Levine, Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

The members of the NARUC greatly appreciate your invitation to address the Subcommittee regarding oversight of the Bus Regulatory Reform Act of 1982. The Bus Act went into effect on November 19, 1982 and it is instructive to see what has happened in this three year period.

The NARUC is especially concerned with the sweeping preemptive interpretation the Interstate Commerce Commission (ICC) is giving to the Bus Act in the areas of entry, exit and rates. The Bus Act only provides for minimal preemption of State regulation relating to intrastate bus operations on an interstate route by a motor carrier. I will discuss each of these three issues separately and explain the profound impact they have on the States.

I. NEW SERVICE OR ENTRY

The Bus Regulatory Reform Act provides that if a carrier has interstate authority, the carrier can be granted authority from the ICC for intrastate operations as part of its interstate operations if the carrier is fit, willing and able to provide the service and it is not against the public interest. 49 U.S.C. Sec. 10922 (c)(2)(A)&(B). While the Act clearly establishes that any grant of intrastate operating authority be predicated upon either preexisting interstate authority which grants the privilege to provide service to the intrastate points, or the carrier's simultaneous request for such authority, the interstate authority is easily obtainable making the intrastate entry easily available. The ICC further interprets the Act as not requiring carriers who apply for intrastate authority to actually operate or to prove that they intend to operate a single bus over the interstate routes authorized in the interstate authority. *Funbus Systems, Inc.*, No. MC-C-10917 (served January 8, 1985), rev. pend. sub nom., *Airport Service, Inc.* v. *ICC*, No. 85-7104, (9th Cir.).

This interpretation flies in the face of Congressional intent. The legislative history of the Act clearly reveals that it was not intended to constitute a mechanism by which bus companies could completely evade State regulation of intrastate entry (See 127 Cong. Rec. H8582, daily ed., Nov. 19, 1981). Clearly, the Act indicates that this section was to be a remedy for the so-called "closed door" problem existing in some intrastate markets prior to the enactment of the Bus Regulatory Reform Act. Instead of the narrow construction required of preemptive legislation, the ICC acknowledges that under its reading of the Act, a carrier may enter intrastate markets with little regulatory difficulty at either the State or Federal level, even if the carrier has no intention or makes no attempt to provide any interstate service. Given that the carrier can devise any interstate pattern it wishes in order to obtain from the ICC the intrastate authority it actually desires, the ICC's policy will lead over time to a virtual preemption of all State authority to regulate new entry into intrastate bus markets.

In addition, the ICC appears to be granting "special operations" authority despite specific prohibition in 49 U.S.C. Sec. 10922 (C)(2)(H). See *Hudson Transit Lines* v. *United States and ICC* 765 F.2d 329 (2d Cir. 1985). When the ICC incorrectly classifies a route as a special operation it is infringing on the jurisdiction the States have over these routes. The reason for the exemption of ICC authority is that these operations are different from regular routes and the passengers take on a strong community of interest other than transportation. Special operations jurisdiction must be properly left with the States.

A legislative solution to these problems must be enacted to prevent effective State regulation of intrastate entry from coming to an end. The NARUC supports legislation such as Section 321 of H.R. 3129, which is currently under consideration in the House Committee on Public Works and Transportation. This section would amend the Bus Regulatory Reform Act, requiring carriers to actually operate the interstate routes for which they seek intrastate authority.

II. EXIT OR ABANDONMENT OF ROUTES

Turning to the exit provisions of the Act, 49 U.S.C. Sec. 10935, the NARUC is troubled with the ICC's unduly preemptive action under the Act. To the extent that an interstate carrier wishes to discontinue intrastate service, the carrier must first apply to the State agency for such authority. If the State agency has denied the request or has not issued a decision within 120 days, then the carrier may petition the ICC for abandonment authority, assuming it also seeks discontinuance of its interstate authority.

In today's deregulatory environment, the ICC's track record of reversing appeals in the area of service abandonments has been extremely permissive. Thus, in spite of the fact that a State regulatory agency may have already conducted a thorough examination in the matter, the carrier can easily abandon vital service to small towns and cities by essentially "appealing" the question to the Federal Agency. Not only does this place the State commissions in a subservient position to the ICC, but it provides the carriers with a running start against anyone who would attempt to question the need for the service abandonment. The NARUC sincerely doubts that the thousands of small towns and cities—critically dependent upon bus transportation—will be able to defend their interests if the ICC is permitted to preempt State jurisdiction in such a broad manner.

As one can readily appreciate, the loss of bus service to small rural communities has proven devastating not only to the individual bus riders who depend on the service but to the communities at large who are finding themselves increasingly isolated—particularly in light of diminishing airline and Amtrak availability. In order to protect the American public from unreasonable fare increases as well as general decline in the quantity and quality of bus transportation services, the NARUC beleives a legislative solution is necessary to curtail the sweeping Federal preemption by the ICC of State abandoment decisions.

In our estimation, the solution to the abandonment problem must be the product of Federal, State, and local cooperative efforts. Legislation such as a prior notice amendment would require companies to give advance notification to the communities they serve about their plans for service discontinuation before any abandonment petitions are filed. This will give the State and local communities the time and information necessary to explore various alternatives before the case becomes an actual abandonment situation. Prior notice statutes have worked well on the State level and by enacting similar legislation on the Federal level, rural communities will be assured of a say in the decisions that affect them.

In addition, we are concerned that the ICC not use its authority to review State abandonment decisions in order to interfere in negotiations between carriers and State agencies to provide taxpayer supported subsidies in order to preserve bus service. Recently, the ICC held that 49 U.S.C Sec. 10935 grants it the authority to require a State to provide subsidies of a specific dollar amount in order to preserve intrastate bus services. Petition of Greyhound Lines, Inc. For Review of a Decision of the New York State Department of Transportation Pursuant to 49 U.S.C. 10935, No. MC-1515 (Sub.-No. 378) (served August 23, 1985). We do not believe that in enacting this statute Congress expected the ICC to referee negotiations between the States and carriers regarding taxpayer subsidies.

III. INTRASTATE RULEMAKING

The NARUC is also concerned with the ICC's overly preemptive reading of the the ratemaking provisions in the Act. 49 U.S.C Sec. 11501(e). An interstate carrier must first apply for an intrastate rate increase with the relevant State agency. If the State agency denies the request or does not act upon it within 120 days, the carrier may petition the ICC for such an increase.

The Act thereby "Federalizes" the intrastate ratemaking process. In some cases bus companies have increased rates dramatically, confident that a denial by the State commission will be overruled by the Interstate Commerce Commission upon appeal. The ICC's current policy of overturning any intrastate rate which is lower than a comparable interstate rate simply eliminates any possibility of meaningful State rate regulation. We do not believe that Congress intended the ICC to so clearly abuse its jurisdiction under this provision of the Bus Act.

CONCLUSION

The Bus Regulatory Reform Act has greatly altered the roles which all of the traditional actors in entry, abandonments and ratemaking must play. We respectfully urge the Subcommittee to examine the broad construction given to the Act by the ICC, which is restricting State regulation of intrastate bus operations beyond the Congress' intent in enacting the Bus Act.

The intent of Congress to enact a narrow remedy for "closed door" problems should not be converted into broad preemption of substantially all State entry regulation through ICC overreaching. In addition, solutions to the abandonment problem must be the product of Federal, State and local cooperative efforts. The ICC must not be permitted to override the States' decisions regarding abandonment of an intrastate route or ratemaking questions.

We again want to emphasize that the Bus Regulatory Reform Act did not completely deregulate the bus industry and that preemption of State authority was only provided for under limited circumstances. The ICC must not be permitted to circumvent the intent of the Act.

Thank you for this opportunity to present these views and I will be happy to answer any questions that the Subcommittee may have.

Senator PACKWOOD. Now let us move to our first panel, Mr. Douglas Rice, Mr. Robert Baer, Mr. Robert Miller and Mr. Robert Gallagher.

Mr. Rice, go right ahead. All of your statements will be in the record. We would ask that you hold your oral presentation to 5 minutes.

STATEMENTS OF R. DOUGLAS RICE, CHAIRMAN OF THE BOARD, NATIONAL MOVING & STORAGE ASSOCIATION, ACCOMPANIED BY DR. T. PETER RUANE, PRESIDENT; ROBERT J. BAER, CHAIRMAN, BOARD OF DIRECTORS, AMERICAN MOVERS CONFERENCE, ACCOMPANIED BY CHARLES C. IRIONS, PRESIDENT; ROBERT R.C. MILLER, CHAIRMAN OF THE BOARD, HOUSEHOLD GOODS CARRIERS BUREAU; AND ROBERT J. GALLAGHER, CHAIRMAN OF THE BOARD, QUALITY MOVERS SYSTEM

Mr. RICE. Mr. Chairman, thank you. My name is Douglas Rice and I am president and chairman of the board of Al Naish Moving & Storage Co. in Cincinnati, OH. Our company was founded in 1916. We have been a carrier agent for the same van line for approximately 53 years. I am also privileged to be the chairman of the board of directors of the National Moving & Storage Association. We thank you for allowing us to testify today.

I am further privileged to be a member of the National Institute of Certified Moving Consultants, which is composed of the sales representatives in our industry, and it will be submitting a statement for the record.

The household goods industry is adapting well to the 1980 Household Goods Transportation Act. However, as a small business representative of our segment of the industry, we must state at this time that our members are still having difficulty with the strong discounting practices in the industry.

NMSA's position on S. 1711 is that we are opposed to enactment as it is presented. That is based on our recent board of directors meeting and also many input statements from State and regional meetings.

NMSA's Task Force on the Future also notes that we are opposed to the shift of industry oversight functions to the Federal Trade Commission. We also believe there is a definite need for antitrust immunity to be preserved so that we can discuss pooling arrangements and also agent/van line discussions, such as collective ratemaking.

In other words, NMSA at this particular time, Mr. Chairman, sees no need for change. In fact, we are asking for more time to absorb the impact of the 1980 regulation.

I thank you, sir.

[The statement follows:]

STATEMENT OF R. DOUGLAS RICE, NATION MOVING & STORAGE ASSOCIATION

BACKGROUND

The National Moving and Storage Association is a non-profit trade association organized and existing under the General Not-for-Profit Corporation Act of the State of Virginia.

NMSA has been in existence since 1920. It is the oldest national trade association in the household goods moving and storage industry. The Association's membership is comprised of over 1,200 local and international movers, agents and warehousemen. The majority of the Association's U.S. membership are agents of the large national van lines. However, many NMSA members have individual ICC operating authority in their own right.

In preparing its comments this year, NMSA has had the benefit of a recent Board of Directors meeting on October 1 & 2, and feedback from hundreds of movers who participated in recent NMSA sponsored conferences or state and regional association meetings. This statement also reflects the earlier recommendations of NMSA's "Task Force on the Future," which was formed in the fall of 1983 to review the impact of deregulation on our industry., The January 1984 NMSA "Task Force" Report, previously provided to this committee, was based on suggestions by a cross section of industry leaders. This "Task Force" analyzed and recommended legislative and educational programs to enable the moving and storage industry to adapt to the changes of the 1980's. Its recommendations are periodically reviewed to insure relevancy. NMSA's Board of Directors in fact, reviewed the subject report at its recent meeting as part of its preparation for these hearings.

ECONOMIC IMPACT OF DEREGULATION ON SMALL BUSINESS STILL UNFOLDING

For the most part, NMSA's membership constitutes the small business sector of the moving and storage industry. Approximately 80 percent of NMSA's member companies gross $1,500,000 or less per annum. It shouild be noted that most local moving companies are family-owned businesses, with less than 20 permanent employees. As we indicated in our testimony last year, since the enactment of deregulatory legislation in 1980, many national carriers have offered an ever increasing variety of price and service options. One prevalent option is the use of discounts to large corporate shippers who provide a volume of business. These include discounts for normal shippers which actually are identified by an account number in a tariff. These discounts have been offered even in the height of the "busy season" and are now common practice. In some cases "COD" or non-corporate account customers also are offered various discounts off of tariff "prices."

This later development somewhat mitigates NMSA's concerns raised in October 1981, at the first oversight hearing, about the discriminatory effect of "volume discounts" on general customers. The predicted negative effect on agent finances and drastic change in industry marketing practices, however, has unfortunately come true! It can be easily argued that in some respects the moving industry created its own set of problems in this area in its rush to take "advantage" of the new "freedoms" afforded by the Motor Carrier Act and the HHGTA. NMSA also believes that these practices have multiplied since the ICC has shown no real interest in the effects of such programs!

NMSA believes it is important for Congress to appreciate that the heightened competition of the past few years is having negative impacts on the stability and financial health of both agents and owner operators. Runaway discount programs may please many corporate traffic managers, but this trend is threatening the infrastructure of the industry. The ultimate effect could be poorer service which would lead to greater complaints and a call for new or tighter regulation, especially at the state level. We will return to other concerns on state regulation later in our statement.

It is interesting to note that a recent analysis of Interstate Commerce Commission quarterly reports for major household goods carrriers who account for approximately 85 percent of the revenues earned by intercity household goods carriers indicated the following:

For the twelve month period ending June 30, 1985 compared to the same period in 1984—

Operating revenues increased 8.9 percent.

Revenue tons hauled increased 2.1 percent.

New carrier operating income declined 7.6 percent.

Operating ratio is 97.5.

Net income which includes local services such as packing and storage declined 16.1 percent.

Return on stockholder's equity declined 14.1 percent.

This trend undergirded by comments by a wide variety of movers indicate that while general tonnage and revenue may be up, profits are down due to deep discounting and rising business costs, especially in the insurance area.

We are concerned, of course, with the impact on the small business segment of the industry of discounts that may have already reached a level affecting the ability of the industry to respond to service demands. Typically, when a discount is advanced, the agent providing local origin and destination services and the owner-operator (independent contractors) experience a reduction in income for a given service. These entities cannot provide quality service at non-compensatory levels for much longer.

NMSA recognizes that due to many demands on Congress' time, its ability to address such matters is limited. The ICC should again however, be asked to closely scrutinize this situation in order to insure that marketing practices do not become predatory. The ICC's interest in such issues has been less than zealous and NMSA suggests that the Committee formally advise the ICC of its obligations to both shippers and the industry in monitoring the impact of discounts and related practices.

PROPOSED LEGISLATION

NMSA has examined the provisions of S. 1711, the "Trucking Deregulation Act of 1985." We have viewed these provisions in the context of recommendations of our "Task Force on the Future" report and also in light of this year's operating experience.

Elimination of ICC regulation of rates and entry

In these two areas, the purpose of the HHGTA and MCA are being achieved at the present time. Companies can easily enter the moving industry and can offer a wide variety of "rates" to the public. Congress has expressed concern in the past with "predatory pricing." Predatory pricing is acknowledged as thwarting competition in the long haul. Below cost pricing is also detrimental to the unique industry structure (van line, agent, owner operator) upon which the public depends to provide crucial services. Congress has also underscored its sensitivity to the uniqueness of our industry through separate legislation. In the same vein, we believe that some oversight by the ICC is necessary to preclude predatory pricing and allow the industry an outlet to address major problems such as the current insurance crisis. NMSA believes that the ICC, properly directed and funded, can serve a useful public purpose by monitoring industry pricing and general marketing practices. The limited time of actual operation under the 1980 laws and 1981 implementing regulations does not provide sufficient evidence to conclude that total elimination of ICC regulation of the trucking industry is appropriate.

Retain statutory safety provisions and financial responsibility

We believe Federal Department of Transportation safety provisions should be retained, and strengthened if reasonable. Insurance industry representatives at a recent Senate oversight hearing have suggested that trucking company economic pressures could have an adverse effect on safety records. NMSA agrees with that observation. Compliance levels must not be allowed to falter. We submit that the moving and storage industry enjoys an outstanding overall safety record and is complying with the new standards. The Committee should be aware, however, that rising insurance premiums with no apparent justification based on loss experience, threaten the small mover's ability to comply with Federal regulations.

We support this committee's efforts to address this general dilemma and also support efforts to provide greater funding through the Federal government to the states. For example NMSA supports DOT (FHWA's) Motor Carrier Safety Assistance Program as a means to help solve this problem. Increased funding for this relatively new program would appear to be useful.

Eliminate tariff filing and publication requirements collective ratemaking immunity

There are advantages to both carriers and consumers of a consultive ratemaking mechanism for establishing reasonable prices for services rendered. In any event, there are numerous benefits associated with the publication of tariffs through a central organization, be it a tariff bureau, trade association, or publishing house established for such a purpose. Among the benefits accruing to both the consumer and industry are:

1. The availability of such information allows the consumer (shipper) to establish what basic rates are and to compare the various estimates he receives with those basic rates;
2. The consumer (shipper) would enjoy the convenience of being able to go to one or more organizations for rate information rather than consulting with thousands of different moving companies and developing appropriate data bases in order to assess the differences between company rates;
3. The industry itself would realize certain cost savings through central publication of tariffs, since each individual company would not have to develop its own printing capability and the associated logistic support systems to disseminate the appropriate information. The reduced costs could be passed on to the consumer in the form of lower rates; and
4. Both the industry and consumer would benefit from central publication of tariffs since such tariffs would include information on services rendered, rules and regulations, released rates, bills of lading, job specification, etc. This is helpful for consumers to determine the rules, regulations, terms and condtions of a contract in order to properly analyze these conditions against any prices for services offered.

Further, the HHG industry because of the local origin and destination services provided by agents in diverse locations is dependent on publication of "tariffs" in order to function reasonably. For these reasons, NMSA favors the retention of current ICC tariff filing and publication requirements and more importantly antitrust immunity for collective ratemaking.

Transfer jurisdiction for consumer protection to the FTC

NMSA is unalterably opposed to the Administration's proposed transfer of consumer protection jurisdiction of HHG operations from the ICC to the Federal Trade Commission (FTC). To quote NMSA's Task Force report:

> The Task Force agreed . . . that there was no justification for any special responsibility to be shifted to the FTC since existing consumer protection laws administered by both the FTC and the Department of Justice adequately protected consumer interests. Moreover, given the uniqueness of the household goods transportation industry, it is crucial that government oversight be exercised by an agency with some expertise and knowledge about the household goods transportation industry.

Preservation of antitrust immunity for pooling agreements

The Motor Carrier Act of 1980 (MCA) included a new section pertaining to pooling agreements. This established a presumption in favor of a pooling agreement between a principal carrier and its carrier agents where the practices were the same or similar to those carried out prior to the new legislation in 1980. The MCA allowed the continuation of pooling agreements when they were in the public interest and did not unduly restrain competition. This legislation also provided a procedure for the prompt approval of new pooling applications. NMSA's Task Force noted that preservation of antitrust immunity for pooling agreements is also paramount to maintain the viability of the household goods industry. Such agreements offer consumers additional service options and allow small movers to benefit from the economies associated with sharing overhead expenses and coordinating the shipment of goods throughout the nation. Such pooling agreements also recognize the benefits of competition between individual carrier agents who have their own operating authorities. Promoting competition in the industry was a major intention of both the Motor Carrier Act and the Household Goods Transportation Act of 1980. NMSA therefore believes this immunity should be preserved indefinitely, rather than just for three years as proposed in S-1711.

A NEED TO PRESERVE ANTITRUST IMMUNITY FOR CARRIER/AGENT DISCUSSIONS

NMSA has great concern regarding preserving antitrust immunity for discussions between agents and van lines. Section 10934 of Title 49 USC as amended by the Household Goods Transportation Act (HHGTA) of 1980 contains a provision which immunizes from the antitrust laws certain discussions relating to agreements between carriers and their agents. Referring to 49 USC Section 10934, paragraph (d):

> The antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to discussions or agreements between a motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of Chapter 105 of this title and its agents (whether or not an agent is also a carrier) . . .

These specifically relate to rates, charges and allowances for transportation provided under the authority of the carriers. In addition, discussions and agreements related to the ownership of a carrier by an agent or carrier agent, membership on the carrier's board of directors by an agent or carrier are immune. Congress recognized that the continuation of such relationships between carriers and agents was integral to the financial and organizational health of the household goods industry. Congress, in their formal report accompanying the HHGTA, noted that such relationships could be jeopardized in the absence of antitrust immunity. While these exemptions are narrow ones, they nonetheless are crucial to insuring that the industry maintains a high level of service to the public. Nothing has changed since 1980 to alter this need.

The mutually beneficial arrangement of coordinating shipments and services is unique in the trucking industry and has worked effectively for over 50 years. Antitrust immunity has played a large role in allowing the agency system to function successfully for both the consumer and the industry.

Preservation of this antitrust immunity accrues multiple benefits to both the industry and consumer alike. The consumer benefits in that he has a variety of choices in terms of selecting movers who represent a broad range of carriers and different capabilities and services at various prices. The retention of such immunity, in fact, enhances competition since agents have numerous choices of van lines with whom to conduct their services. Elimination of such immunity could lead to further concentration in the household goods industry in which several large companies would become even larger. Agents would effectively become solely reliant on the van line companies for interstate business, thus diluting the benefit of being an independent family-owned business. NMSA believes that the absence of immunity would have a negative impact on the small business segment of the moving and storage industry. If such immunity were eliminated, carriers could no longer discuss rates with their independent agents, several of whom may be located in the same city, and thus eliminate the economics of sharing traffic and sharing the overhead cost of advertising and general administration. The average agent would not be able to duplicate the various support functions a van line provides and consequently must be able to discuss both rate and service options with his respective van line.

This immunity should be continued for the foreseeable future.

Prevent State encroachment

We are concerned that if federal agency oversight is withdrawn it could be replaced by a myriad of state rules and laws. Given that movers travel into and from all 50 states, a lack of uniformity in state regulation is particularly onerous.

NMSA has actively supported the efforts of the National Association of Regulatory Utility Commissioners (NARUC) to advance uniformity of state regulation and taxation of the motor carrier industry. For the last two years we have been involved with the NARUC State/Industry Task Force on Motor Carrier Regulatory Uniformity and their proposal to centralize state administration of Public Law 89-170.

We are aware of the strong concern in Congress with the problem of non-uniformity as indicated by Section 19 of the Motor Carrier Act of 1980 and we applaud efforts to create working groups to recommend solutions. However, the efforts of any group, NARUC or any other, will take a period of time to produce meaningful results. In the interim, federal oversight should be maintained.

Related issues

NMSA would like Committee members to be aware of its concerns on several related issues that impact the moving and storage industry. These views hopefully, can be considered as the Committee members participate in policy discussions and legislative activity on these matters:

Multiemployer pension plan problems

The withdrawal liability provisions of the Multi-Employer Pension Plan Amendments Act (Title IV of ERISA) remain one of the most difficult problems facing moving and storage company employers. After the enactment of MEPPA, many of NMSA's members believed that their pension liability was limited to contractual obligations. But they soon found that under the new law they were also saddled with the unfunded vested liabilities of the multi-employer pension fund to which they contribute.

Our members have found that their flexibility in making fundamental business decisions have been significantly thwarted by the withdrawal liability provisions of MEPPA. Routine transactions such as sales, acquisitions, mergers, purchases, or business closings, can cause employers to suddenly be responsible for their pro rata share of the unfunded vested liability in their pension fund.

NMSA calls the Committee's attention to the pension plan problems because it represents a major stumbling block to a healthy competitive industry. NMSA is actively participating in several efforts to identify a legislative remedy and will seek individual committee member support as a proposed solution emerges.

Tax reform

NMSA is an active member of the Small Business Legislative Council (SBLC) a permanent coalition of some 86 trade associations representing over 4½ million small businesses. NMSA, along with SBLC supports the purpose of the administration's tax reform proposal but is opposed to certain proposals like taxation of employee fringe benefits and elimination of certain pension plan options (specifically elimination of deferrals allowed under 401 (K)). NMSA is also opposed to the repeal of the investment tax credit (ITC) in light of the need for many moving companies to refurbish their equipment. The repeal of the ITC would be a disincentive for new purchases.

Insurance

NMSA supports Congressional and ICC investigations and hearings regarding the insurance crisis in the transportation industry. To go a step further, NMSA believes this issue to be of such paramount importance that it supported SBLC's call for a "Presidential Insurance Task Force" to be set up to produce specific recommendations in 90 days for eventual Congressional consideration. Attached to our statement is the news release and format request submitted on September 10 for suggested action by the administration.

CONCLUSION

The Household Goods Transportation Act is a fair and well-balanced piece of legislation. The moving and storage industry has demonstrated its ability to adapt to the changing climate of the 1980's. The consumer has benefited from the improved performance of the industry in all major categories of service.

NMSA urges this Committee to take note, however, of a few problem areas. The small business segment (agent, owner operator) of the industry continues to bear the brunt of discount practices. This reality needs to be reviewed by the ICC. If federal regulation is reduced, a clear federal mandate to protect the industry as a whole from unnecessary state regulation is required. Preservation of antitrust immunity for agent-carrier discussions and polling agreements is mandatory to preserve a healthy industry. FTC oversight of the moving industry is totally unnecessary. As noted NMSA is opposed to S-1711 as proposed and has identified its major concerns in this statement.

Senator PACKWOOD. Thank you.

Mr. Baer.

Mr. BAER. Thank you, Mr. Chairman. My name is Bob Baer. I am president of United Van Lines and chairman of the American Movers Conference. With me today is Charlie Irions, president of the AMC. My statement is submitted on behalf of the AMC, a national trade association for household goods movers representing carriers and agents of various sizes. The AMC is also affiliated with the American Trucking Association.

We appreciate the opportunity to appear before the subcommittee's oversight hearing on the impact of the Household Goods Transportation Act of 1980. We would also like to comment on legislative proposals to completely deregulate the motor carrier industry, particularly as it would impact movers.

Although household goods movers have much in common with the rest of the trucking industry, we also have a number of unique operating characteristics, a fact recognized by Congress in 1980 when it enacted a separate Household Goods Transportation Act. We submit that these differences must again be considered in appraising the success and proposed future of deregulation.

The act's effects are difficult to quantify because of our relatively brief experience in coping with the removal of long-time regulations, a transition complicated by the first 2 years by severe economic recession. Overall, however, we believe the act has benefited both movers and our customers. In our judgment it has reduced governmental regulatory interference in our day-to-day operations, provided an opportunity and incentive for movers to expand into new business lines and markets, given us greater flexibility to offer price and service options that our customers want, and led to improved service performance and increased customer satisfaction.

In our opinion, a principal reason for the success of the new regulatory freedom and flexibility is that Congress wisely and, we believe, correctly maintained an underlying uniform Federal statutory framework to serve as a stabilizing influence. Movers more than other motor carriers need a framework because their shipping needs and systems are composed of dozens and sometimes hundreds of independent, locally owned agents who are often carriers in their own right.

These agents provide the manpower, the services and operating terminals for van lines, with several agents in various parts of the country typically combining their efforts in support of each move. Elimination or drastic changes to this essential framework would seriously hinder a van line's relationship with its agents, its owner-operators and particularly its customers.

There are certain essential elements of the Federal framework which we believe should be retained for movers. First, the carrier-agent exemption from antitrust regulation must be preserved so a van line and its agents can continue to coordinate pricing and marketing strategies and efficiently pool shipments within a cooperative nationwide system.

Second, consumer and operational regulations should be administered uniformly through a transportation-experienced agency such as the ICC or DOT, not an agency largely inexperienced and unfamiliar with our business, such as the FTC. Such regulations benefit the consumer as well as the mover, and the potential damage for their removal is evident. Let us give several examples.

Elimination of uniform minimum carrier liability standards would result in consumer confusion as well as greater loss exposure and the increased likelihood of litigation if a van line should choose to reduce its minimum legal liability or eliminate it altogether. Likewise, the absence of a Federal framework for consumer protection regulations governing estimating, weighing practices, weight rate guarantees, credit arrangements, and the like would work to the disadvantage of the consumer, especially the occasional shipper.

The regulatory framework is also vital to the owner-operators in terms of leasing and service agreements. Without it, we are concerned that we would be faced with a potential hodge-podge of varying State franchising laws.

Third, limited antitrust immunity for collective ratemaking in the moving industry should be retained. Collective ratemaking for movers is not a form of price support. Rather, it permits the gathering of cost data and the establishment of published rates nationwide. The net result is strongly proconsumer because it permits competitively priced services to be offered even to remote points which individual movers might be reluctant to serve without costing information on which to base charges.

In summary, we believe that repealing or dramatically changing the essential elements of the present Federal framework for movers would be a major disservice to the moving public and to our industry.

Thank you very much.

[The statement follows:]

STATEMENT OF THE AMERICAN MOVERS CONFERENCE

INTRODUCTION

I am Robert J. Baer, president of United Van Lines, Inc. and chairman of American Movers Conference Board of Directors. Accompanying me today is Charles C. Irions, president of the American Movers Conference.

These comments are submitted on behalf of the American Movers Conference (AMC or Conference), a national trade association for the household goods moving industry, representing carriers and agents of all sizes. Our members service and transport over 90 percent of the household goods shipments moved in interstate commerce. AMC is also affiliated with the American Trucking Associations, Inc.

The Conference appreciates this opportunity to appear before the Subcommittee for its fifth annual oversight hearing on the impact of Public Law 96-454, the Household Goods Transportation Act of 1980. We will also be commenting on recent legislation proposals to further deregulate the motor carrier industry, particularly as they would affect the moving industry.

I. EXECUTIVE SUMMARY

Household goods movers have many things in common with the rest of the trucking industry, but they have unique operating characteristics that also set them apart. Congress recognized this in 1980 when it enacted the Household Goods Transportation Act.

Although it is difficult to assess the impact of the regulatory reform acts of 1980 separately from the economic problems that continue to plague the entire trucking industry, we believe that overall the provisions of the HGTA have been beneficial for movers as well as for their customers.

Here is what the Household Goods Transportation Act and the Motor Carrier Act have accomplished for movers and consumers:

Reduced regulation and governmental interference in day-to-day operations.

Given an opportunity for movers to expand into new areas and markets not served in the past.

Provided movers flexibility to offer price and service options that customers want.

Improved service performance and increased customer satisfaction.

However, it should be emphasized that the primary reasons the freedom and flexibility in today's marketplace has been so successful is because Congress wisely left in place an underlying Federal statutory framework that has served as a stabilizing influence. Without this framework, the highly competitive and over-discounted marketplace would be a chaotic briar patch, serving neither the best interests of the consumers or the business world.

Movers, even more than other motor carriers, have a continuing need for a uniform, nationwide legal framework in which to operate. Indiscriminate withdrawal of, or drastic changes to, the existing Federal framework would lead to a proliferation of new and conflicting Federal, state and local regulation negatively affecting a carrier's relationship with its agents, van owner-operators and customers.

There are certain essential elements of the present Federal framework that should be retained for movers:

First, the carrier-agent exemption from the antitrust regulation must be preserved so that a van line and its agents can continue to coordinate price and marketing strategies and to efficiently pool shipments within a cooperative, nationwide system.

Second, the consumer and operational regulations should be administered uniformly at a transportation-experienced agency such as ICC or DOT, not the Federal Trade Commission. The regulations provide several beneficial yardsticks for both carriers and customers, such as:

Carrier liability standards under federally mandated bills of lading and released rate provisions. Elimination would result in increased litigation, legal uncertainty and consumer confusion.

Consumer protection regulation affecting estimating, weighing practices, rate guarantees, credit arrangements and dispute settlement. The Federal framework is very helpful for consumers, and movers ultimately benefit when their customers are satisfied.

Owner-operator leasing and service agreements. Without this regulation, many different state franchising laws would come into play.

Collective ratemaking. What remains of collective ratemaking today in the moving industry serves a pro-competitive and pro-consumer purpose. The existence of a "benchmark" price schedule makes it possible for an individual only occasionally purchasing transportation services to compare prices and negotiate more effectively.

In summary, repealing or drastically changing the essential elements of our present Federal framework for movers would not benefit the moving public. We firmly believe that further deregulation as proposed by the DOT bill would result in a proliferation of regulation and legal complexities that would be detrimental to consumers and the moving industry.

II. THE HOUSEHOLD GOODS TRANSPORTATION ACT: AN ASSESSMENT

The AMC continues to believe that where the regulatory reforms of 1980 have been properly administered and implemented they have benefitted the moving industry and the moving public. In spite of the complex problems that have confronted the industry during the past five years, we think the balanced approach taken by Congress in 1980 has been effective.

To evaluate whether or not the HGTA has achieved what was intended by Congress, we propose to examine the policy objectives framed by Congress in Section 2 of the Act, and let the results, as we see them, speak for themselves:

The first two objectives are common to those expressed in the Motor Carrier Act and address the importance of a safe, stable and financially sound household goods transportation industry, finding that the best means of assuring such a system is through competition and reduced regulation.

Increased Competition. The moving industry has undergone accelerated changes since 1980. Movers comment that their businesses are entirely different today than they were five years ago. The provisions of the HGTA, together with the entry and rate reforms of the MCA, have provided new opportunities for movers and added benefits to the consumers. Virtually all segments of the moving industry have taken advantage of the new freedoms, and have expanded into new areas and markets not previously served. But in addition to the competition that has come primarily from within the industry, we have also seen a growing influx of new entrants in the form of household goods brokers, relocation companies and self-haul agencies. The impact of these new entities on interstate movers and consumers may bring about more substantial change to the marketplace, but it is still too soon to provide a definitive assessment of their impact on industry competition and performance.

Reducing Unnecessary Regulation. While we have expressed strong opposition to some of the actions of the ICC in administering the Act during the past five years, overall the level of regulation has been reduced. The household goods consumer rules that were revised by the ICC in 1981 included some unworkable and impractical rules that we have attempted, unsuccessfully, to change. However, we cannot fault the Commission for overzealous regulatory activities such as those engaged in prior to 1980. We here congratulate Congress for enacting the "harm standard" enforcement guidelines in the HGTA provisions which ended the ridiculous situation in the late 1970's where carriers were assessed millions of dollars in civil forfeitures for paperwork rule violations, even though no harm was done to the customer.

The only area we have not seen a significant reduction of regulatory burdens is for government traffic.

Over the five year period there has been little change in the regulatory burden for movers who participate in government traffic programs. The Department of Defense (DOD) through its sub-agency, the Military Traffic Management Command (MTMC), continually revises and changes their participation rules and procedures. MTMC seldom lets a program settle in before it begins a new program with revised rules and procedures.

Carriers and agents servicing government shipments are predominately small companies. The state of change and confusion produced by MTMC's continual regulatory adjustments are particularly onerous for a segment of the industry that is having economic difficulties adjusting to the new and less stable business environment.

However, there has been one noteworthy improvement in the area of military traffic regulation. The CONUS Automated Rate System (CARTS) was developed by MTMC to automate domestic rates and is an example of how paperwork burdens can be meaningfully reduced. Under CARTS carriers are no longer required to submit manually thousands of individual tenders with millions of rates which MTMC had to process individually. Now a magnetic tape is filed and this has definitely reduced the paperwork burden for the industry amd MTMC alike.

The third and fourth objectives emphasize that shippers' interests can best be protected by allowing maximum carrier flexibility in pricing services and meeting shippers' needs, while continuing to provide necessary consumer protection at the Federal level.

Since the heavy regulation of the 1970's had not proved effective, Congress chose to change the direction of consumer protection by relying instead on the natural impetus of competitive forces once carriers were allowed more flexibility. By provisions of the HGTA, Congress therefore directed the ICC and other federal agencies to minimize their regulation to the fullest extent possible consistent with the complementary goal of consumer protection. The successful attainment of those objectives is apparent in today's moving marketplace.

Carriers offer widely varying price and service options and the greatly reduced number of complaints testifies to consumer satisfaction. However, one caveat should not be forgotten. With all the freedom and flexibility in the marketplace today, there is still in place the stabilizing influence of the underlying federal statutory framework. It is important that this not be overlooked in our rosy assessment, because we believe it is an essential element of the success story.

Although it is difficult to pinpoint where the impact of economic factors ends and that of regulatory reform begins, our overall assessment of the HGTA is positive. It took 50 years to build the system that was in place in 1980. Even after five years of reform, the transition to a new system is just getting started. We fervently hope there will be no drastic upheavals to make that transition more difficult.

III. CURRENT FEDERAL REGULATORY FRAMEWORK REFLECTS MOVERS UNIQUE ORGANIZATIONAL STRUCTURE AND CONSUMER ORIENTATION

Movers, even more than other motor carriers, have a continuing need for a uniform, nationwide legal framework in which to operate. Indiscriminate withdrawal of the existing Federal regulatory presence would lead to a proliferation of conflicting state and local actions governing carriers' relationships with their agents, owner-operators and customers. While most sectors of the trucking industry deal primarily with businesses that are more or less accustomed to shipping or receiving freight on a regular basis, movers deal very extensively with individual householders in a non-business setting. This circumstance has several consequences. The individual customer's inexperience inhibits our ability to standardize our service, and in fact creates a need for highly personalized and tailored customer service. It also adds to the potential for misunderstanding and disputes between the carrier and the shipper over such matters as estimates, charges, loss or damage and credit. Even more significantly, the inexperience of household goods shippers creates a perception of unequal bargaining power between them and the carriers. This, in turn, creates pressure on government at all levels to adopt consumer protection rules for household movers. While the moving industry does not dispute the need for consumer protection rules, the industry does expect them to be (a) uniform throughout the nation, and (b) adapted to the practical circumstances of the moving business.

In 1984, the American Movers Conference commissioned an in-depth legal and legislative study on the impact of deregulation proposals circulated in the 98th Congress. The study found that, whatever the merits of regulation and deregulation in other sectors of the trucking industry, the withdrawal of Federal regulation for interstate household goods carrier operations would not stop the proliferation of laws and legal burdens, but rather would tend to increase it at some level of government. The unique service characteristics and organizational structure of the moving industry can only be preserved by a continued Federal regulatory presence, and the study recommends legislative objectives centering around the need to retain essential elements of existing ICC jurisdiction for household goods.

However, in the even that ICC authority is sunsetted for all motor carriers, the study recommends Federal-State preemption provisions to prevent other federal agencies and states from enacting their own mini-ICC household goods regulations to fill the void created by the ICC's demise. Further, it recommended that any consumer protection regulation remaining at the Federal level should be administered by a transportation-experienced agency, such as the Department of Transportation, not the Federal Trade Commission.

The AMC Board of Directors has adopted overall policy, in general agreement with the study results, which recommends that the following key elements of present ICC jurisdiction be retained for household goods carriers as part of any Federal regulatory scheme:

1. Exemption from antitrust regulation for van line-agent relationships (49 U.S.C. § 10934(d)) and carrier pooling agreements (49 U.S.C. (11342)).
2. Carrier liability standards under federally mandated bills of lading and released rates provisions. (49 U.S.C. 10707 and 10730)
3. Equipment leasing and service agreement regulations issued under 49 U.S.C. § 11107.
4. Household goods estimate and rate guarantee practices under 49 U.S.C. § 10734.
5. Household goods credit regulations under 49 U.S.C. § 10743.
6. Consumer protection regulations under 49 U.S.C. § 11110, shipper-harm standard enforcement provisions of 49 U.S.C. § 11901(i), and unlawful weighing practices under 49 U.S.C. § 11917.
7. Dispute settlement programs and attorney-fee assessment sanctions under 49 U.S.C. § 11711.
8. Limited antitrust immunity for collective ratemaking activities allowed under 49 U.S.C. § 10706(b)(3)(D).

IV. IMPACT OF ADMINISTRATION LEGISLATION PROPOSAL TO ELIMINATE OR CHANGE DRASTICALLY REGULATORY SCHEME ESTABLISHED BY 1980 REFORM ACTS

There are two alternative legislative proposals now before Congress which call for partial or total elimination of those aspects of Federal motor carrier regulation that were retained in 1980. The first is H.R. 3222, the "National Motor Carrier Productivity and Safety Improvement Act of 1985," introduced by Congressman Moody on August 1, 1985. The second is S. 1711, entitled the "Tracking Deregulation Act of 1985," introduced in behalf of the Department of Transportation on September 26, 1985. It is to the latter proposal that these comments are addressed since the House bill exempts household goods carriers from most provisions.

Our views are not based on any past philosophy of "regulating for regulation's sake." Movers have generally embraced the competitive concepts of open entry, flexible pricing and minimized regulation. Our views are based on economic and practical concerns influenced by the operational nature and complexities of an interdependent moving system that the American public has come to depend upon for essential, efficient services.

A. Economic health of industry in transition would be threatened

The health of the industry as reflected by the data reported by the larger carrier is generally good, but that positive veneer camouflages serious economic problems being experienced by smaller carriers, agents and owner-operators.

Crucial to the economic health of the moving industry are the thousands of independent moving companies who act as agents and the independent contractor owner-operators who load and deliver the household goods. They are the backbone of this industry, and their economic stability must not be jeopardized in the rush to attain a philosophical goal. Likewise, the plight of the small independent carriers who are fighting to survive and gain market share in an increasingly competitive environment rampant with price wars, is not fairly reflected by the generally positive economic picture. The Household Goods Carriers Bureau has surveyed the economic condition of some of these industry entities, and the problems associated with increasing operating costs at a time of decreasing prices are troubling.

The problems are real and should not be dismissed lightly. Many small carriers, agents and owner-operators are in a precarious financial situation. They are just recovering from a prolonged recessionary economy and are investing heavily in long-delayed equipment and facility replacements. Last year was the first good business year after three disastrous years. At the same time, these small business entities are coping with sharp increases in federal and state taxes, as well as the huge insurance rate increases that have reached crisis proportions. The small mover is labor-intensive and cash-poor, and he is worried about the future.

The small mover is also frustrated and perceives the government as continually "changing the rules" and "upping the ante." Government leaders at the federal and state levels tout the small business entrepreneur as the back-bone of the American economy. But these congratulations ring hollow to many of our small business movers who complain about the increasing problem of staying solvent in light of government actions.

The Administration's new deregulation proposals are seen as one more threat to the small mover's struggle for stability. The current economic regulation that exists today at the federal level has not prevented the moving industry from becoming a highly competitive business. In fact, we are still adjusting to this rapid transition. Thus, it is difficult to understand the rationale for eliminating the current regulatory vestiges and opening the door to a different type of regulation under the authority of the Federal Trade Commission and the regulatory agencies and court systems of fifty different states. This is viewed by movers as posing an unnecessary economic threat of great proportions.

B. To dismantle the legal framework for van line-agent relationships would only multiply regulatory burdens and exposures

The existing regulatory framework enacted in 1980 by the HGTA recognizes the dual relationship between local moving companies and their van line principals, and it does so in several specific respects. It allows an individual van line and its agents to discuss and negotiate the principal carrier's marketing strategies, rates and accessorial charges, to coordinate service, and to arrange other terms and conditions of the principal-agent relationship. Since even small agents frequently possess multi-state authority and such discussions and agreement can be viewed as between competitors, the statute explicity confers antitrust immunity. It allows agents to jointly own a van line and sit on its board of directors; and although such relationships are between actual or potential competitors, the statute confers antitrust immunity (49 U.S.C. 10934(d)). Further, it allows a van line and its own agents or a group of independent carriers to agree to pool or divide their traffic, service or revenue, and, when such agreements or combinations have been approved by the Interstate Commerce Commission (there being a presumption favoring approval if the same or similar arrangements previously have been approved by the agency), the participants are granted antitrust immunity. (49 U.S.C. 11342(b)(2) and (b)(3)).

The DOT bill would terminate these federal statutory provisions after a three-year phase-in period. Ignoring the findings and intent of Congress during the deliberations preceding the passage of the Household Goods Transporation Act, DOT states in the section-by-section analysis of S. 1711 that the "principal-agent relationships [of the moving industry] are satisfactorily governed under common law and the temporary retention of special antitrust immunity is designed merely to deal with the transition of a system of principal-agent relationship that parallels such relationships in other industries."

That statement demonstrates a lack of understanding of this highly-specialized facet of the motor carrier industry. If the antitrust immunity that permits van lines and their agents to enter into pooling and pricing agreements is ended, we question whether household goods moving as it is now conducted would survive. The prohibitions of the Sherman Act are too specific and its penalties too servere to allow the van lines and their agents to run the risks of maintaining their traditional relationships.

An antitrust impact study of the elimination of the HGTA provisions was prepared for AMC by Fritz R. Kahn and Mark J. Andrews of Verner, Liipfert, Bernhard, McPherson and Hand. Their conclusions are that the nature of the relationship between a van line and its agents, i.e. partly vertical and partly horizontal, would make application of the antitrust laws to the moving industry extremely complex and uncertain. Moreover, the study found that the franchisor-franchisee relationship is not a useful model or analogy for the relationship since the legal framework governs franchising was designed to deal with a set of problems diametrically opposite to the problems encounted in the moving industry. In sum, they concluded that there is simply no substitute for the existing antitrust immunities granted by the HGTA. (Antitrust impact study conclusions are appended to these comments.)

C. Transferring consumer regulation to Federal Trade Commission would result in more not less regulation

As part of its plan to deregulate the motor carrier industry and ostensibly remove from industry its remaining regulatory burdens, DOT proposes to transfer jurisdiction for consumer protection regulation from the Interstate Commerce Commission to the Federal Trade Commission. Unfortunately, that deregulatory step has the potential of doing just the opposite. Although the changing climate at the FTC during the last five years has appeared to curb some of the aggressive over-regulation of the past, the situation could easily revert with a change in Administration.

It was only a few years ago that associations of doctors, lawyers and other professionals, the Chamber of Commerce of the U.S., dairy groups, advertising groups and the National Association of Manufacturers were among leaders of a curb-the-FTC movement. The interstate moving industry is an amalgam of small businesses with limited resources to battle a "Big Brother" federal agency.

Aside from our fears of being subject to the whims of an agency that historically has been a heavy regulator, we are concerned that going to a new agency only sets the scene for the establishment of an entirely new federal regulatory system. The educational process that must take place between a regulator and those it regulates is long and arduous. To foist a new and potentially troublesome regulatory process upon an industry that is ostensibly in a deregulated transition period makes little sense.

We, therefore, urge Congress to reject outright proposals to re-regulate this industry under the FTC. Irrespective of the future of ICC jurisdiction over the rest of the motor carrier industry, household goods consumer-related regulations should either remain at the ICC or in the alternative be transferred to another transportation-experienced agency such as DOT.

D. To abolish Carmack amendment liability and other Federal consumer-related regulation would unleash a multitude of conflicting laws and judicial interpretations

In a real sense, consumer protection is the ultimate purpose of virtually all the existing Federal regulations discussed in these comments. This is true even of the van line-agent provisions discussed earlier, because agents are the principal point of contact for consumers. Thus, to reserve the consumer protection label strictly for the regulations in 49 C.F.R. 1056 is to define the term far too narrowly.

One extremely important consumer protection element in the present regulatory scheme is found in 49 C.F.R. 11707 which provides the legal standards of liability for common carriers under receipts and bills of lading. The DOT bill would repeal this provision, the statutory embodiment of the Carmack Amendment, and local law would have to be applied to disputes involving carrier liability for loss and damage to personal goods transported.

Currently, household goods carriers are held legally liable for any loss or damage to the extent provided in "released rate" tariff provisions approved by the ICC. A consumer can purchase increased levels of liability under ICC tariff provisions, but a carrier cannot limit its liability to less than 60¢ per pound, per article.

The Carmack Amendment also provides other consumer protection. It prohibits a carrier from contracting to allow less than nine months for claim filing or two years for filing lawsuits. It also imposes on carriers participating in interline movements "joint and several liability," so that if a shipment is lost or damaged anywhere enroute while in custody of any interline carriers, they all share liability to the shipper. These specific provisions apply only to federally regulated traffic.

Consumers are also the beneficiaries of an HGTA provision encouraging carriers to establish arbitration procedures. Disputes that arise in connection with loss and damage claims can be resolved informally and inexpensively through dispute settlement programs approved by the ICC under 49 U.S.C. 11711. Indeed, the currently effective regulatory framework penalizes household goods carriers that fail to participate in such dispute settlement programs, awarding attorneys' fees to successful claimants obliged to take their disputes to court.

If these federal statutory provisions for motor carriers were repealed, the uniformity of released rates would disappear, as would the mechanism for informally resolving disputes as to loss or damage arising from household goods shipments. In the absence of regulation the carriers would be able to set the terms and conditions for their undertaking as carriers did under the common law, and there is no question that under the common law carriers were able to contract with their shippers to limit their liability in the event of loss or damage. Moreover, in the absence of regulation there would be no incentives for resolving loss and damage disputes between the carriers and their customers short of court action. The situation would revert to what it was before the Act to Regulate Commerce was approved in 1887, described by one observer as follows:

"With each court privileged to interpret the common law as it thought best, it was not surprising that there came to be considerable confusion in the United States with respect to the common law liability of carriers . . . the pattern of carriers' liability in the United States came to [resemble] a crazy quilt." (T. W. VanMetre, *Industrial Traffic Management*, p. 202 (1953))

In the same vein, a plurality of legal complications would occur in carrier operational areas not directly related to consumer protection, such as equipment leasing. The DOT bill would repeal 49 U.S.C. 11107, which would result in the elimination of the existing ICC regulations governing leases of equipment to carriers and agents by owner-operators. Undoubtedly, this would bring into play many different state franchising and "business opportunity" laws.

To summarize, the DOT bill would eliminate the areas discussed above from the federal regulatory structure and have consumers and industry rely in the case of disputes on the varying interpretations of state statutes and case law. The inevitable result would be increased litigation, legal uncertainty and consumer confusion. There does not seem to be any justification for creating this potential for chaos all in the name of deregulation.

E. Collective ratemaking in the moving industry

Another feature of the existing regulatory structure which should be continued is the limited antitrust immunity for collective ratemaking activities still available to organizations of carriers established pursuant to 49 U.S.C. 10706(b). Two such organizations long have served the moving industry, the Movers' & Warehousemen's Association of America, Inc., and the Household Goods Carriers' Bureau. The latter is the publisher of the Mileage Guide, which is widely accepted as the definitive work for calculating highway mileage between any two points in the United States.

Because the above two organizations themselves will be active participants in the debate about the merits of collective ratemaking, the issue will be treated only briefly here. For present purposes, it will suffice to make two points. First, to the extent that section 10706(b) organizations may have restrained competition in the past, their ability to do so in today's environment has been sharply reduced by several factors, including the abolition of collective ratemaking for single-line service (§ 10706(b)(3)(D)), and the influx of new entrants who file their own individual tariffs. Secondly, what remains of collective ratemaking today may actually serve a pro-competitive and pro-consumer purpose, by setting industry standards and facilitating "comparison shopping."

An individual household goods shipper in 1985 who had not moved in five years would be amazed at the widely varying price levels and innovative services available today that were not even envisioned before 1980. While some tariff rates are still collectively formulated, generally they no longer are collectively charged. Nevertheless, the collectively-formulated tariffs establish "list prices" which can be of considerable assistance to consumers attempting to sort out the array of new pricing and service options. The existence of a benchmark price schedule prepared by a recognized organization makes it possible for an individual only occasionally purchasing transportation services to compare prices and negotiate more effectively. Thus, what remains of the antitrust immunity for collective ratemaking plays a uniquely valuable role in the moving industry, and should be preserved in that context.

V. CONCLUSION

Whatever the merits of regulation and deregulation in other sectors of the motor carrier industry, only through continuation of the current Federal regulatory presence can the unique organizational structure of the American moving industry be preserved, along with the exceptionally responsive service this structure makes available. The unique character of this industry was recognized by Congress when it passed the HGTA, and its characteristics have not changed in the ensuring five years.

We have attempted to point out the shortcomings of the far-reaching changes being proposed for the moving industry by the Administration's deregulation bill. We believe our rationale is sound. On the other hand, we have heard no compelling reasons for changing the still-evolving system. Therefore, we continue to support the objectives of the HGTA and urge that Congress not repeal its provisions.

APPENDIX—ANTITRUST IMPLICATIONS OF REPEAL OF H.G.T.A. PROVISIONS FOR VAN LINE-AGENT RELATIONSHIPS

(1) Absent Immunity, The Antitrust Laws Would Prohibit All Price Agreements and Endanger Most Non-price Agreements Between Van Lines and Their Agents.

In evaluating the Sherman Act exposure of van lines and their agents if their agreements were to lose their currently effective immunities, an antitrust analysis requires consideration of several questions. First, would the agreements be deemed "vertical" or "horizontal" or a mixture of both? Vertical agreements involve companies said to be at different levels of the same industry which do not compete directly with each other (e.g., manufacturers and distributors), whereas horizontal agreements are those between companies which do or readily can compete directly with each other. Secondly, would the agreements be deemed to involve price-fixing, non-price restraints, or some of both? Thirdly, would the involved agreements constitute per se antitrust violations, or would a rule-of-reason defense be available? Per se violations are those "which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." [1]

On the other hand, availability of a rule-of-reason defense means that consideration may be given to the facts peculiar to the business in which the restraint is applied; the nature of the restraint and its effect; and the history of the restraint along with the reasons for its adoption.[2]

While a court's choice between a per se and a less draconian rule-of-reason approach to a particular case may be influenced by whether the restraint is vertical or horizontal, or whether it directly involves price-fixing, the moving industry can obtain little comfort from these distinctions. Even though the current leadership of the Antitrust Division may be disinclined to act against vertical restraints, the many court decisions condemning vertical restraints are well known to the private plaintiff's antitrust bar. Moreover, price-fixing agreements continue to be deemed illegal per se, regardless of their vertical or horizontal character.[3]

Recent antitrust decisions have created considerable uncertainty as to non-price restraints, such as the "pooling" or market-allocation agreements in force between van lines and their agents. The case law now suggests that such agreements absent immunity, might be considered vertical and, if so, would be subjected to a rule-of-reason analysis. See, generally, ***Continental TV Inc.*** v. ***GTE Sylvania, Inc.,*** 433 U.S. 36 (1977), which reversed prior decisions including *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365 (1967). If a court could be persuaded that non-price agreements between van lines and agents are vertical and thus merit review under the rule of reason, such agreements might well withstand review because of the efficiencies they permit; see Part II.A.3, supra. The problem, however, is that there are no hard and fast rules for distinguishing vertical from horizontal restrictions, and it is far from clear that the relationships between most van lines and their agents are truly vertical by any definition.

Indeed, many of the restraints in the household goods moving industry can be characterized as both horizontal and vertical because of the actual and potential competition between van lines and their agents. Where a restraint exhibits both horizontal and vertical features—as when a manufacturer distributes its own product but also utilizes independent distributors on whom it imposes marketing restraints—the choice of a correct analytical standard under the antitrust laws becomes exceedingly difficult.[4] 'Hybrid restraints" associated with such "dual distribution" systems were routinely treated as per se violations prior to the *Continental* decision, *supra*[5] although it must be added that *post-Continental* Supreme Court case has considered the question.

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[1] *See, e.g., United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210 (1940).

[2] *See, e.g., United States v. Topco Associates*, 405 U.S. 596 (1972).

[3] The *per se* illegality of price-fixing agreements has been recognized continuously at least since *Dr. Miles Medical Co. v. John P. Parker & Sons*, 220 U.S. 373 (1911).

[4] Cf. *Central Chemical Corp. v. Agrico Chemical Co.*, 531 F. Supp. 533 (D. Md. 1982)

In short, removal of existing antitrust immunities surrounding the van line-agent relationship might be consistent with free-market rhetoric, but household goods movers and the thousands of small businesses which are their agents and owner-operators would be cast adrift in a sea of legal complications and uncertainties. So great would be risk of antitrust challenges that no van line or local household goods mover would retain the present agency relationships. Of course, agents are free to surrender their independent operating authorities, so as to remove the potential for competition between these collaborating entities; but any coercion to oblige them to do so itself may be actionable. Alternatively, the agents might seek to become subsidiaries of their principals in order to bring themselves within the Supreme Court's recent ruling that a parent and a wholly-owned subsidiary constitute a single enterprise incapable of a Sherman Act conspiracy with itself; *Copperweld Corporation* v. *Independence Tube Corporation*, 104 S. Ct. 2731 (1984). Such a unification of agents, however, might raise issues under section 7 of the Clayton Act (15 U.S.C. 18) and might require compliance with elaborate prenotification procedures under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18A), again assuming that a "sunset" law removed the possibility of immunization under 49 U.S.C. 11341 and 11343 relating to carrier mergers and acquisitions. In any event, it would be highly ironic if a reduction in potential competition for household-goods traffic, through amalgamation or surrender of agents' operating authorities, proved to be the only way for van lines and their agents to diminish their antitrust exposure in an effort to stay in business.

(2) The Problem Cannot Be Solved by Treating Van Lines and Agents as Franchisors and Franchisees.

Some may argue that, if current antitrust immunities were removed, van lines and their agents simply could recast their operations in the franchising mold, and thereafter conduct their affairs under the same legal framework now employed by nationwide networks of locally-owned automobile dealerships, gasoline stations and fast-food outlets. The franchisor-franchisee model, however, utterly fails to resolve the issues presented by van line-agent relationships—even when one lays aside such technical objections as the absence from most van line-agent argreements of the fee payments typical in franchising arrangements.[6]

In the first place, franchising is not entitled to special treatment or an exemption from the antitrust laws. "Acts . . . that create otherwise unreasonable restraints of trade are not insulated from the antitrust laws by the fact that the [actor] functions as a franchisor"; *American Motor Inns, Inc.* v. *Holiday Inns, Inc., supra* n. 16, at 1253-54 (3d Cir. 1975). The *Holiday Inns* case involved precisely the kind of "dual distribution" system discussed in Part III.A, supra, in which the status of the franchisor and franchisee oas competitors in certain markets led to a finding that certain restrictions in the franchise agreement constituted an unreasonable restraint of trade.

The antitrust hazards of a franchising system in the moving industry would be compounded by the need for close operational coordination both among the various franchisees and between them and the van line franchisor. Two hamburger stands or service stations selling the same brand do not have to coordinate their day-to-day operations with each other or with the home office in order to serve the public; movers do.

Moreover, the existing regulatory framework governing franchisor and franchisee is entirely inapposite to the realities of the moving industry. The general franchising regulations adopted by the FTC in 1978 (16 CFR 436) go only to disclosure; they accord no antitrust immunity and specifically permit each state to adopt regulations more protective of the franchisee.[7] The states have responded to this invitation in a bewildering variety of ways. Eighteen states have passed franchise disclosure and/or registration laws of their own; twenty states have enacted even broader disclosure requirements in connection with "business opportunities"; seventeen have passed laws regulating the ongoing franchisor/franchisee relationship and the termination thereof; and these three lists of states overlap only partially.[8]

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[5] *See, e.g., American Motor Inns. v. Holiday Inns, Inc.*, 521 F. 2d 1230 (3d Cir. 1975); *Hobart Bros. Co. v. Malcolm T. Gilliland, Inc.*, 471 F. 2d 894 (5th Cir.), *cert. denied*, 412 U.S. 923 (1973).

[6] *See, e.g.*, provisions adopted by the FTC to define franchises at 16 CFR 436.2(a)(2) (1978).

[7] *See* note 2 following 16 CFR 436.3.

[8] With respect to state franchising laws, the authors are indebted to the legal department of the Mayflower Corporation, which has prepared a detailed, private study of this subject entitled

Continued

Significantly, the common policy thread of all these Federal and state franchising regulations, as well as of the specific FTC-enforced provisions relating to automobile and gasoline dealerships,[9] is the protection of franchisees against deceptive and unfair practices by franchisors. Disclosure requirements in particular have been thought necessary to rectify a serious informational imbalance existing between prospective franchisees and their franchisors. No such imbalance exists in the moving industry, however, especially in those instances where the agents have an ownership interest in the van lines or sit on its board of directors. The moving industry in this sense is analogous to agricultural cooperatives, which have been specifically excluded from the coverage of the FTC disclosure rule. As stated in the FTC rulemaking docket, "there is no record evidence to suggest that members of cooperatives need the disclosures required by this rule to protect them from practices of the cooperative which they own." 43 FR 59709 (1978).

The focus of public attention in the moving industry runs in exactly the opposite direction. Whereas policymakers in the franchising context were concerned with the plight of franchisees who fell victim to the abuses of franchisors, a primary concern of regulators has been with safeguarding homeowners or shippers from irresponsible van line agents. The legislative history of the Household Goods Transportation Act acknowledged that household goods carriers rely heavily on agents to provide the necessary equipment and services for the transportation of household goods. Because the agents deal directly with the public, it appeared to Congress that many of the problems experienced by shippers were being caused by agents. H. Rep. No. 1372, 96th Cong. 2d Sess. 4, reprinted in 1980 U.S. Code & Cong. Ad. News. The Congressional response to public complaints about abuses by agents was embodied in 49 U.S.C. § 10943(a), which makes a van line responsible for "all acts or omissons of any of its agents which relate to the performance of household goods transportation services," and in 49 U.S.C. § 10934(b), which requires such carriers to use "diligence and reasonable care in selecting and maintaining agents." Significantly, the very same section recognizes that a van line cannot be made responsible for its agent's activities unless it is also given the authority to control its agents; hence the provision in 49 U.S.C. § 10934(d) providing the antitrust immunity necessary for coordination and control of rate and other relationships between a van line and its agents.

(3) Recommendation: Retain Existing Immunities.

As has been shown, the partly vertical and partly horizontal relationships between van lines and agents would make application of the antitrust laws to the moving industry extremely complex and uncertain. Moreover, the franchisor-franchisee relationship is not a useful model or analogy for van line-agent relationships, and the legal framework which governs franchising was designed to deal with a set of problems diametrically opposite to the problems encountered in household goods moving. Thus, there simply is no substitute for the existing antitrust immunities which protects the unique van line-agent relationship at the heart of today's moving industry.

Senator **Packwood**. Thank you.

Mr. Miller.

Mr. **Miller**. Thank you, sir. My name is Robert R.C. Miller. I am vice chairman of the board of Atlas Van Lines, Inc., of Evansville, IN, and I am also chairman of the board of the Household Goods Carriers Bureau. My testimony today is submitted on behalf of the bureau and its approximately 1,700 members in response to this subcommittee's kind invitation.

Addressing the 1980 legislation first, it is evident that my industry continues to adjust to the effects of deregulation. We have experienced 1 good financial year out of the 5, which was 1984, and while we were hopeful that 1985 would measure up to our 1984 performance it is now evident that it will not. 1985 data available thus far indicates that a 25.3-percent decline in return on equity has occurred. Second quarter net income after taxes has dropped 33 per-

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Deregulation of the Household Goods Transportation Industry and the Consequent Impact of Federal and State Franchise Laws. See, especially, pp. 4-11 and Addenda I and II in that report.

[9] *See* 15 U.S.C. 1221 *et seq.* (auto dealerships); 15 U.S.C. *et seq.* (gasoline dealerships).

cent, and preliminary third quarter 1985 figures are considerably worse.

These declines took place in spite of minimal increases in tonnage and gross revenue. This means that revenue and tonnage increases have been more than offset by cost increases. While we are aware that proponents of further deregulation argue that the 1980 legislation was not intended to guarantee a profit for movers, we are also aware that the Nation relies on movers to relocate more than 800,000 families annually and in our view the public interest is best served by a financially healthy moving industry.

A number of factors continue to plague the industry. As I said, in 4 out of 5 years we experienced lackluster operating results and the 6th year will be considerably worse than our best year. Rate discounting is causing serious dissention among owner-operators and agents even at the point of owner-operator threatened work stoppages and shipment boycott.

Constantly increasing State and Federal taxes and fees continue to impact carrier costs and profit. Not unlike other segments of the trucking industry, we are also feeling the serious effects of the insurance crisis, with our premium costs increasing by as much as 500 percent in some cases.

Turning to the DOT bill, S. 1711, it should be evident to this committee that the bill does not propose to deregulate movers. It would keep in place regulations that permeate every aspect of the daily business that we conduct while at the same time destroying our ability to jointly maintain rates and charges for our services on the van line level and on an industrywide level.

As we explain in our full statement to the committee, contrary to the DOT position we insist that the ability to engage in collective ratemaking has directly resulted in the unified moving system that serves our country so well today. It ensures and facilitates a pricing mechanism essential to a fully coordinated national moving system. It ensures accurate estimates and it facilitates the pricing of moving services between thousands of van lines, agents, owner-operators and independent carriers.

We, better than the proponents of deregulation, have a long history of trial and error that has led to the body of law that now regulates the moving industry.

Certainly a clear acknowledgment of this is contained in the DOT proposal to remove all operator regulations. However, DOT seriously errs in its failure to also recognize the importance of collective ratemaking. We strongly recommend that if additional hearings are scheduled on S. 1711, or any similar proposal, separate hearings addressed to the moving industry be conducted. Such a procedure was followed in 1980 and should be followed in the future.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT R.C. MILLER, ON BEHALF OF HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Robert R.C. Miller. I am Vice Chairman of the Board of Atlas Van Lines, Inc. with headquarters at Evansville, Indiana, and Chairmafn of the Board of the Household Goods Carriers' Bureau, Inc. (Bureau of HGCB). This statement is submitted on behalf of the Bureau and its approximately 1,700 member carriers in response to the Subcommittee's invitation to present testimony on implementation of the Household Goods Transportation Act of 1980, S. 1711.

The Bureau is the principal ratemaking, tariff publishing and data gathering organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the Interstate Commerce Commission (ICC or Commission) under Section 10706 of the Interstate Commerce Act, 49 U.S.C. § 10706. The Bureau's rates and charges apply throughout the United States and between points in the United States on the one hand, and points in Canada and Mexico, on the other.

I have been active in the transportation industry for 33 years, with the last 21 being devoted to the household goods moving industry. I also serve as a member of the Executive Committee of American Movers Conference and Conference Vice President of American Trucking Associations, Inc.

As the representative of the moving industry's principal rate bureau my testimony will address the state of my industry as it has evolved under the 1980 legislation and our preception of the industry if a proposal such as S. 1711 was enacted into law. Many issues raised by S. 1711 are addressed in testimony presented on behalf of the American Movers Conference and are not treated here. The primary emphasis of my testimony is directed to the collective ratemaking issue. The Bureau, however, supports the position taken by the American Movers Conference before this Committee as well as the position taken by American Trucking Associations, Inc. at the hearing held before this Committee on September 27, 1985, on S. 1711.

I. OVERSIGHT—HGTA OF 1980

The Bureau has presented testimony at each of the oversight hearings held since 1980. We complained at each hearing about the ICC's apparent unwillingness to administer the Interstate Commerce Act in a manner that we believed was consistent with Congressional intent. With each year our criticism became more pointed as we came to realize that the Commission was unwilling to do anything that would serve to implement the will of Congress. Since we last testified before this Committee, the Commission has not taken any steps that would change this view. To the contrary, the Commission has been little more than an impotent observer of the moving industry's pricing practices. As we have noted in the past, the Commission has concluded that household goods carrier rates can never be predatory, unjust, unreasonable, or discriminatory in their treatment of consumers and other shippers. This position persists notwithstanding explicit statutory prohibitions contained in the Interstate Commerce Act barring various forms of carrier ratemaking that Congress has declared unlawful.

In the past the Bureau has addressed the question of relaxed entry resulting from the Commission's liberal construction of the entry standards contained in the Motor Carrier Act of 1980. In sum, it is correct to once again note that the relaxed ICC certification process has had little effect on the number of carriers who are engaged in the interstate transportation of household goods. While competition within the industry remains intense, it always has been and there are no new competitors who are having a significant impact on the intensity of that competition. Appendix A hereto contains an analysis of the changes that have occurred in the numbers of carriers that have entered and left the moving industry since 1980. The important conclusion drawn from that analysis is that the number of carriers engaged in household goods transportation has remained constant and the 10 largest carrier's market share remains unchanged since 1984.

In the area of carrier pricing, significant changes have occurred since 1980. Carriers continue to offer a full range of price and service options to consumers to attract business. We continue to find, however, that total available business is not affected by these strategies. Unlike the demand for airline passenger service, the demand for household goods service is not influenced by price. Airlines routinely induce consumers to travel by offering reduced air fares. Household goods carriers, on the other hand, cannot induce families to relocate by offering reduced charges for their services. Families move for personal reasons and not because they desire to take advantage of a moving company's reduced transportation charges.

The economic state of the moving industry has not remained static. Each quarter the ICC issues operating results of the 15 largest household goods carriers. It attempts to evaluate the financial health of te moving industry based on those reports. The latest ICC report compares the second quarter of 1985 to the same 1984 quarter and the 12 month periods ended June 30, 1984, and 1985. This latter data shows a serious 25.3 percent decline in return on equity and an equally serious 16.6

percent decline in net income after taxes. The data for the second quarter of 1985 also shows a decline in net income after taxes of 33.4 percent. These declines were recorded in spite of minimal increases in tonnage and gross revenues. The conclusion to be drawn from this is that revenue and tonnage increases have been more than offset by cost increases incurred by the major van lines.

The ICC report serves as the Commission's sole barometer of the financial viability of the moving industry. On its face it would not be unreasonable to assume that a 17.4 percent return on equity coupled with some growth in revenue and tonnage reflects a healthy industry. However, the ICC report says nothing about the financial health of the entire moving industry i.e., van lines, agents and owner-opertors. Today the industry includes approximately 4,500 agents and 25,000 owner-operators that are under direct contract ot van lines or their agents. Shipment loading/unloading, intercity movement, warehousing, packing and various other accessorial services are performed by these agents and owner-operators. Therefore, any evaluation of the industry must take into account each of its segments which is termed by the ICC the "Consolidated Moving System" (CMS).

The Bureau has developed a method of analyzing the financial condition of the industry combining the financial characteristics of its three components in a manner that eliminates duplicate revenues and expenses and identifies earnings by source as well as investment and assets required to generate those earnings. Bureau developed CMS data for each of the years 1978 through 1983 is shown in Appendix B hereto. The equity base of the major van lines in 1983 was $280.2 million compared to $998.4 million for the CMS, or 28 percent of that of the CMS. The van lines' base for return on investment is only 16 percent of the CMS investment base. Van line long term debt was $38.8 million in 1983, or less than 10 percent of the long term debt of the CMS. Obviously, the debt incurred and investment base required to sustain the moving capacity of the industry rests with agents and owner-operators.

The 1984 and 1985 CMS studies are still in progress. They rely on data from 600 agents and 300 owner-operators, all of whom are randomly selected through a statistically valid sample. The small group of 1985 reports that have been received thus far indicate that net income after taxes has declined from $9,286,000 for the 12 months ended June 30, 1984, to just $919,000 for the 12 months ended June 30, 1985. While we do not believe and we certainly hope that the final results of this study will not reflect such deep declines, this data does establish an alarming trend and it is evident that a deep decline in net profits is being incurred in 1985. Also, two of our significant study carriers have reported an inability to complete their studies since one was in the middle of being liquidated and the other was going through a reorganization. In this same connection it is alarming to also note that the 11th largest household goods carrier in the Nation and one of the carriers that was routinely included in ICC periodic reports, Neptune World Wide Moving, has declared bankruptcy.

While 1984 was a generally good operating year for movers it was preceded by four years (1980–1983) that were truly lack lustre. Predictions that 1985 will be a good year, but not as good as 1984, will definitely miss the mark. Numbers of shipments transported have declined despite a slight increase in tonnage. It is also evident that carrier traffic mix is changing, i.e., fewer personal effects shipments and more second and third proviso shipments. The logical conclusion to be drawn from all of this is that the moving industry continues to reel under the effects of the 1980 deregulation process, a severely felt recession, significantly increased state and federal taxes and a burgeoning insurance premium crisis. In short, the industry has yet to plant its feet squarely on the ground and predict with confidence that it has recaptured its economic health and looks to the future with optimism. On the insurance crisis issue alone, it is extremely alarming to note that household goods carrier premium notice cancellations are at an all time high. Statistics compiled by the ICC indicate that in the period October 1, 1984, to September 30, 1985, 1,273 cancellation notices have been issued against movers.

Our final appraisal of the effects of the HGTA of 1980 continues to be one of cautious optimism. However, as discussed in the balance of this statement, we are strongly opposed to any further regulatory changes being thrust upon our industry. Certainly the public has benefitted and continues to benefit from the weighing and balancing of public and carrier interests that was struck by Congress in the 1980 legislation. Change for the sake of change presents an illogical and unsettling prospect of further economic disruptions, a development my industry can certainly do without.

The Department of Transportation proposal to further deregulate the household goods moving industry would see the end of all economic regulation of movers and elimination of the collective ratemaking antitrust immunity that is extended to the industry. On the other hand, it would retain all of the operating regulations that presently impact the day-to-day operations of movers in their dealings with consumers. Specifically, the DOT proposal would shift to the Federal Trade Commission jurisdiction to enforce regulations that govern (1) the form of carrier estimates of shipment charges; (2) statements to consumers indicating the imposition of shipment minimum charges; (3) the preparation of orders for service which recite charges for all required services; (4) the procedure carriers must follow to determine shipment weights; (5) reasonable dispatch requirements including notifications to consumers of shipment delays; (6) notifications to consumers of shipment charges prior to delivery; (7) a prohibition against carrier liability disclaimers; (8) the selling of insurance by carriers to consumers; (9) carrier liability for loss or damage while goods are transported or while they are in storage; (10) maintenance of a consumer complaint and inquiry procedure; (11) the terms for extension of credit to consumers including the collection of shipment charges; (12) the preparation and filing with the ICC of annual performance reports. Notwithstanding the DOT proposal to eliminate all tariffs, seven of these regulations also require that carriers publish implementing provisions in their tariffs.

Obviously, in a very real sense, the DOT bill does not propose to deregulate movers. It would keep in place regulations that permeate every aspect of the daily business we conduct while at the same time destroying our ability to jointly maintain rates and charges for our services on the van line level and on an industry-wide level. Contrary to the DOT position, we insist that the ability to engage in collective ratemaking has directly resulted in the unified moving system our Country relies on today. This is why all movers from the very largest to the smallest have historically participated in collective ratemaking and have continued to do so since enactment of the 1980 legislation.[1] Without collective ratemaking the moving industry will no longer function as a fully coordinated nationwide moving system that transports and services consumer shipments at every location in the United States. All but the very largest national van line systems will no longer be able to market their national moving system that relies on service performed by non-affiliated carriers. Even the large van lines are unable to blanket the Nation in a manner that insures a complete service to or from every location.

We in the moving industry recogize that we have been caught in the general push towards transportation deregulation. We, better than the proponents of deregulation, know well the long history of trial and error that led to the body of law that regulates the moving industry today. A tacit acknowledgment of this history is contained in the DOT bill in that it apparently fears that complete deregulation of movers could lead to carrier abuses and a demand for re-regulation of the industry. Obvious evidence of this is found in the proposal to retain all operating regulations applicable to movers. DOT errs in its failure to also recognize the importance of economic regulation. Some rather recent developments in the State of New Jersey should serve to illustrate this point. Motor carriers of freight have been completely deregulated in New Jersey for many years. Notwithstanding this, in 1968 the New Jersey Legislature enacted the Public Movers Act which required mover certification, set operating standards and required the filing of tariffs. Not unlike developments on the National level in 1980 the Governor of the State of New Jersey proposed repeal of the New Jersey Public Movers Act and complete deregulation of the New Jersey moving industry. The New Jersey Legislature rejected the proposal and in 1981 enacted the "New Jersey Public Movers and Warehouseman Licensing Act". This statute contains the full range of operating requirements that apply to movers on the national level including a tariff filing requirement. In fact, the New Jersey statute declares to be unlawful any rate preference or advantage and requires strict carrier adherence to published rates and charges. Unlike the federal statute the New Jersey statute does not authorize collective ratemaking. In this regard we submit that the operating requirements of a nationwide moving system are obviously more expansive than those of a state requiring a much higher degree of industry cooperation and coordination to service 120,000 locations. By permitting this coordination, collective ratemaking serves the public interest. It stimulates competition among carriers and it insures consistently high quality service to or from every location in our Country, regardless of size.

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[1] Of the over 2,000 ICC certificated household goods carriers who operate in our Nation, all are engaged in collective ratemaking and are members of the Household Goods Carriers' Bureau, Inc. or Movers' & Warehousemen's Association of America.

In the course of the hearing held September 27, 1985, on S. 1711, the Secretary of Transportation and ICC officials made mush of the so-called tariff "paper chase". As explained in Appendix C hereto, no such "paper chase" exists in the moving industry.

III. HOUSEHOLD GOODS CARRIER COLLECTIVE RATEMAKING AND THE PUBLIC INTEREST

This section will discuss in greater detail why the collective ratemaking engaged in by household goods carriers is in the public interest and should continue. It will not address the merits of collective ratemaking in general, but rather it will focus on the particular market conditions that set the moving industry and the collective ratemaking it engages in apart from other forms of motor common carriage.

It is an accepted fact that over the past recent decades American society has become increasingly mobile. Each year interstate household goods carriers move more than 800,000 families that relocate for a variety of personal reasons such as change of employment, retirement or health. Notwithstanding this mobility and the relative ease with which the moving industry accommodates this phenomenon, the average American family moves only once or twice during a lifetime and is largely unfamiliar with how movers operate or how they price their services. It was in recognition of these facts, among others, that Congress fashioned the Household Goods Transportation Act of 1980 with its uniquely tailored provisions to insure reasonable regulation of the moving industry in furtherance of the public interest.

The 1980 legislation accorded household goods carriers, ". . . maximim . . . flexibility in pricing their services and meeting the needs of their shippers."[2] Since 1980 carrier pricing innovations and price competition have abounded in the moving industry. This has occured without interference or disruption of the maximum reasonable, non-discriminatory rate levels that have been developed through collective ratemaking. It is this collectively established maximum reasonable rate level that insures the assessment of reasonable rates and charges and maintenance of the joint carrier pricing mechanism that is essential to continuation of a fully coordinated national moving system.

The ability of a society to have the capacity to move a family in tact, door-to-door, with all of the personal possessions necessary to sustain the family at reasonable and non-discriminatory rates is a social necessity. The question to be addressed here is whether society's needs will be better served by eliminating present federal regulation of collective ratemaking and replacing it with federal regulation under the antitrust and other laws. Before addressing this question, certain facts related to the transportation of household goods will be briefly stated.

A. Nationwide service

The unique nature of the service provided by household goods carriers is revealed in statistics developed from the service they perform. The average household goods shipment is transported roughly 1,100 miles. There are almost no full van capacity shipments (less than 3%) with the average shipment weighing only 5,600 pounds. Van capacity is generally 21,000 pounds and average lading weight is approximately 9,600 pounds. The present system is available to provide transportation between any two points in the United States (7.2 billion possible combinations) and not just between large metropolitan centers. In fact, in 1983, 50 percent of the personal effects shipments transported by Bureau member carriers involved a move to or from towns or cities having populations of 50,000 or less. This Nationwide system must also routinely accommodate shipments that do not follow predictable traffic patterns. While there are some overall moving trends that occur from time to time such as the population exodus to the south and soutwest, there is no way to accurately forecast all of the points to and from which moving service will be required from one year to the next.

B. Peak period movements

Although the geographical distribution of shipments is uncertain, the timing of the movements follows a definite pattern. Over 60 percent of the personal effects shipments move during the summer months (May 15 through September 15) while very few shipments move during those other times of the year such as weeks perceding significant Holidays, Easter, Christmas and New Years. This polarity reflects social preferences that are not going to change. Americans want and need to move when it least disrupts the family, whether it be timing the move when children are out of school or timing the move so it does not occur during a holiday season. The household goods moving industry must and has accommodated itself to these conditions.

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[2] H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in [1980] U.S. Code, Cong. & Admin. News.

C. Consumer interest

Household goods carriers deal directly with consumers in a very personal way as does not other segment of the motor carrier industry.[3] The legislative history of the 1980 Act details Congress' recognition of the need for consumer protection when the public deals with movers:

"The fact that the household moving sector does business directly with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lack a thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possessions, which often are of a fragile nature." H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in [1980] U.S. Code, Cong. & Admin. News, 4271, 4272.

". . . the committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Accordingly, this bill provides the Interstate Commerce Commission with special authority to protect these shippers." Ibid., at 5-6; 4275.

Not surprisingly, consumers are unfamiliar with carrier pricing practices much less tariffs and their rate and other provisions; they are in an unequal bargaining position, and they must put their trust in the carrier they select to provide service. In short, they are in a vulnerable position and require certain regulatory safeguards to offset or balance the carriers' advantageous bargaining position.

D. Accessorial services

More than any other segment of the transportation industry, movers are deeply involved in providing a myriad of accessorial services that are essential to a complete moving service. Whereas the freight carrier's obligation generally begins and ends at the tailgate of a motor vehicle, the household goods carrier must provide important additional services apart from linehaul transportation. These services include: (1) packing and unpacking; (2) storage-in-transit; (3) warehouse handling; (4) pickup and delivery to or from storage-in-transit; (5) extra pickup service; (6) extra labor services; (7) bulky articles such as boats or automobiles; (8) piano moving; (9) waiting time; (10) elevator, stair and distance service; (11) overtime loading and unloading service; (12) reweigh service; (13) appliance service. Without the ability to provide one or all of these services for each shipment transported, the moving industry would not be responsive to the public's need for a complete nationwide moving system. Also, lest it be thought that these services are insignificant in terms of the total service provided by the moving industry, in the year 1983, 2,561,475 accessorial services were required to be performed for the shipments transported. Obviously, since the number of services performed exceeded the total number of shipments transported, many shipments required more than one service. In fact, 3.4 accessorial services per shipment were performed.

E. Economic structure of the moving industry

A very specialized economic structure has developed in the moving industry because of the need to provide nationwide pickup and delviery service for less-than-truckload shipments that follow no fixed pattern of movement, move during a peak season and call for a large measure of local accessorial services. The first block in this economic structure is the owner-operator.[4] These men and women are independent contractors that provide the labor to load and unload and the power equipment necessary to transport shipments. They are generally compensated on a percentage of the revenue generated by the shipments they haul. They are free to contract with any household goods carrier or to seek contracts with general freight carriers, specialized truckload carriers and now even with shippers and private carriers. They are free to come and go as the market demands.

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[3] Consumers fall into three categories: national account shippers—someone other than the consumer pays for the move, usually a corporate employer; c.o.d. shippers—consumers bear the expense of their own move; and governemnt shippers—comprised of General Services Administration and other government agencies and the military.

[4] It is estimated that the moving industry contracts with 25,000 owner-operators.

Better than 95 percent of the household goods shipments transported in any one year moves in equipment that is not owned by a national van line.[5] This high percentage is dictated by economic necessity. In a business where 60 percent of the traffic is seasonal, carriers cannot make the capital investment in equipment necessary to handle the peak volume nor can they maintain the pool of skilled labor necessary to operate equipment during a relatively narrow time frame. The owner-operator, however, is able to leave the market during periods of low demand and sell its services in other areas where a demand exists.

The second block in the economic structure is made up of carrier agents. Again this is the natural result of the market served. No single carrier can finance the facilities and personnel necessary to carry on a nationwide moving business. Yet without the agency system an efficient and responsive moving industry could not exist. Moreover, even with an agency system, van lines cannot operate independently and also maintain a nationwide moving system adequate to meet public demand. To a significant degree the necessity for cooperation and agreement among van lines and their agents and between agents is the cornerstone of the moving industry.

Van lines are the third block in the economic structure. They provide the coordination necessary to direct the flow of traffic by generating necessary backhaul moves and by matching shipments for movements to particular areas of the country. Given that the average household goods shipment only weighs 5,600 pounds, it is simply uneconomical to transport a single shipment in a single vehicle.

The need to match less than van capacity shipments also requires that close cooperation exist among competing van lines if a nationwide moving system is to work efficiently. Roughly 200,000 household goods shipments are transported annually through use of the equipment, facilities or services of more than one carrier. Below are four actual examples of shipments showing the kind of agreement and cooperation that allows a nationwide system to function.

(1) Carrier 1 booked a shipment going from Cleveland to St. Louis requiring two week storage at St. Louis. When the shipment arrived in St. Louis, the agent of carrier 1 had no available storage capacity. The shipment, therefore, had to be stored at the storage-in-transit rates of carrier 2 which did have storage available in St. Louis.[6]

(2) Carrier 1 booked a 3,000 pound shipment moving from Atlanta to Madison, Wisconsin. Carrier 1 was able to join the shipment with other traffic for transportation as far as Chicago. This lone shipment could not be economically transported to Madison by Carrier 1 so it was turned over to Carrier 2 which did not have other shipments moving in the direction of Madison that made the delivery feasible.

(3) Carrier 1 booked a shipment from Los Angeles to Cheyene, Wyoming. The carrier has no agent in Cheyene so when the shipment arrived in Cheyene the unloading, labor and other accessorial services necessary for delivery were performed by the agent of another carrier.

(4) Carrier 1 stored a shipment at its agent's warehouse in Boston for over two weeks. On the date the shipper's house became available Carrier 1 was unable to provide the equipment and labor necessary to move the shipment from the warehouse to the new home. Carrier 2 was used to perform the service.

These examples demonstrate the interdependence of household goods carriers if they are to provide a nationwide moving service. Carriers prefer to handle shipments entirely within their own systems in order to maximize their revenues. But this is not possible either economically or physically.

It is obviously essential that carriers and agents rely upon one another to provide linehaul and accessorial services. As it should be, these services are performed without the consumer becoming involved in the dealings between van lines or agents. The number of variables affecting the actual service provided is of absolutely no concern to the consumer who is merely concerned with the proper pickup, transportation, storage and delivery of his/her shipment. Consumers are, however, concerned with price and the rates and charges that will be applied to perform the service they require. The collective maintenance of a national pricing structure set by regulatory restraints at a maximum reasonable level insures that the service required by the public is charged for at rates and charges that are reasonable and non-discriminatory.

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[5] Available data shows that the 10 largest national van lines only own 600 power units.

[6] In 1983, 172,350 or 22.9 percent of all personal effects shipments transported required storage-in-transit service.

The foregoing profile of the moving industry highlights the unique characteristics of a nationwide system that is both economically viable and at the same time responsive to a public need. The question raised by the DOT proposal is whether this system will function more efficiently if collective ratemaking is prohibited and regulation of the industry is accomplished by subjecting it to the federal antitrust laws. A more efficient system, of course, would be presumed to better serve the public interest. At this point it is also appropriate to note that shifting the current operational regulations from the ICC to the FTC and repealing all economic regulation of the industry does not present choice between regulation or no regulation. Rather, the choice is between regulation under the Interstate Commerce Act or regulation under the full array of other regulatory laws that presently exist or would soon come into existence and particularly regulation of the industry under the antitrust laws.

Before addressing the principal question presented here, it is appropriate to first reflect on certain of the historical factors that brought the moving industry to its present sophisticated state of development. While there is a strong tendency today to disregard the lessons learned in the regulatory process that preceded enactment of the 1980 legislation, certain of those lessons are worth repeating.

In 1955 and again in 1972, the ICC set down a number of circumstances that it said ". . . created, nutured, and sustained the [moving industry] agency system":

1. Household goods transportation is a highly specialized and personalized business, and entails to an exceptional degree the necessity of personal contact with the shipper.
2. The individual shipper will not utilize the services of a household goods carrier more than a few times in his lifetime and the services involve the transportation of his most intimate possessions.
3. Unlike commercial traffic, which is generally prepared and packed for shipment by the shipper and offered to the carrier at a loading dock, household goods require the rendition of numerous accessorial services, such as the careful packing of fragile articles, the furnishing of wardrobes for the transportation of unpacked items of clothing, and the protection in transportation of the finished surfaces of furniture.
4. The population of the United States is widely distributed over a vast territory, and the density per square mile varies substantially as between the States. Conceivably, a family in any city or town may at some time desire to relocate to any other city or town regardless of the location or population of the origin and destination points.
5. In view of the nature of household goods movements, which are generally diffused and nonrepetitive, regular volume movements between, from, or to fixed points, with opportunities to obtain a high percentage of return traffic, are exceptions to the rule.
6. Because of these factors, a local carrier or warehouseman located in a given city may be offered substantial outbound traffic from that point; but without representation or agency affiliation with a carrier-principal at the outlying destination points, he has little opportunity to obtain return loads.
7. Likewise, for a national van line, the character of the traffic requires the establishment of a widespread network of local agents for the solicitation of shipments wherever they may arise, and for the performance of the necessary accessorial services, including storage in transit. North American Van Lines, Inc.—Investigation of Control, 60 M.C.C. 701, 725 (1955); Practices of Motor Common Carriers of Household Goods, 115 M.C.C. 628, 632–633 (1972).

In the Commission's view it was these circumstances and ". . . not the impetus of regulation, [that] gave rise to the industry-created agency organization. That organization grew out of the free enterprise system in response to the difficult problems of operational efficiencies and economics." Practices of Motor Common Carriers of Household Goods, supra, at 633. Today, the same circumstances exist and collective ratemaking is the mortar that has held the structure together. In 1950 when the Commission approved the Household Goods Carriers' Bureau collective ratemaking agreement, it noted that:

> The need for joint consideration and action in the initiation and revision of joint rates is clear, and is not seriously questioned by the Department [of Justice]. There is no suggested alternative for the procedures provided in the agreement for such consideration of the joint rates of the more than 2,000 carriers here that would not involve cumbersome, duplicative, and costly action by these carriers individually serious inconvenience to shippers when ascertaining the applicable rates, and disadvantages to the numerous small carriers, parties to joint rates of Nation-wide application now provided by the agency tariffs, in competing with large carriers having

Nation-wide operations. Agreement Relating to Household Goods Carriers' Bureau, 277 I.C.C. 443, 450 (1950).

These circumstances exist today as well. Yet collective ratemaking has permitted a National moving system to function by maintaining a reasonable and non-discriminatory rate level in furtherance of the public interest.

F. The need for collective ratemaking

Most markets are best served by application of free market principles which prohibit competitors from agreeing on prices. Free market principles, however, should not be applied if they result in less competition rather than more competition or if they result in inefficient and uneconomical operations that increase costs to the provider of a service or increase prices to the public. This is particularly true if the industry is one that provides a necessary public service. In short, free market principles do not work in every market and in the case of the moving industry it would not increase competition, encourage more efficient operations or reduce moving costs to the public.

Collective ratemaking is required to support a fully integraded nationwide moving system. With 200,000 shipments annually requiring the service of more than one carrier either in linehaul, accessorial, or storage service, carriers must be able to collectively agree upon rates and charges. Central to this point is the fact that household goods shipments are sporadic, do not follow fixed patterns of movement and move in a contracted period of time all of which does not allow carriers to determine their need for the other carrier assistance at the time a shipment is booked or is made available for shipment. This is why the ICC many years ago granted household goods carriers special tariff authority[7] to maintain so-called open routing joint rate arrangements, meaning all movers were relieved of the normal requirement applicable to all other motor carriers that they name their joint-line carriers in tariffs including the points of interchange. In the end, economic reality precludes any one van line from having sufficient facilities and personnel to perform an all-encompassing door-to-door pickup and delivery service between all points in the United States. And obviously all communities cannot support agents for all major van lines. Yet today each van line competes for and books shipments moving to any community because collective ratemaking allows them to rely on and use the facilities and services of their competitors. Collective ratemaking, therefore, promotes rather than hinders competition and in so doing also promotes the public's interest in the maintenance of reasonable and non-discriminatory rates and charges that are available to and from all points in the United States.

The benefits of collective ratemaking can be further demonstrated by projecting what would happen if the antitrust laws are applied to the moving industry. The Sherman Act prohibits any combination, agreement or conspiracy in restraint of trade or commerce. The courts have read the Act to apply only to unreasonable restraints but they have adopted a per se rule that applies to certain pernicious activities. Price fixing is conduct falling within the per se rule without consideration being given to whether the prices are reasonable. Although very legitimate arguments can be made for judging collective ratemaking in the moving industry under the rule of reason, as a practical matter, repeal of the antitrust immunity contained in Section 10706 of the Interstate Commerce Act would end collective ratemaking. Prudent carriers would not continue collective ratemaking given the risks of criminal sanctions and treble damage relief provided by the Sherman Act.

Even assuming each van line could preserve its own agency system, competition among carriers would still be lessened by application or the antitrust laws. Under collective ratemaking, all carriers can compete for traffic moving to any point in the United States. Under the antitrust laws, carriers will only be able to compete for traffic that can be handled by their own agency systems. This means that consumers will have fewer available carriers and in many cases only one carrier that can provide a complete door-to-door moving service. Free market economics will not cure this situation. The free market assumes that if rates are returning a high measure of profits, new carriers will enter the market or existing carriers will expand their services. This has been argued to be particularly true with respect to trucking because of the relatively low capital investment needed for entry. This contention, however, has no validity when applied to the moving industry. The random and non-repetitive traffic patterns prevalent in this industry prevent the predictability necessary to make expansion and new entry a sound business proposition. No carrier, can be expected to expand its agency system to a smaller community not presently served in the hope that next year sufficient people will be moving to that community to justify the investment necessary to perform a complete moving service. The industry is aware of this situation. Therefore, in those communities where there is litter or no competition, market conditions will provide an inducement to increase rates to the level of what the traffic will bear. Such pricing is unacceptable in a personal service market that meets a social need. Thus, under free market conditions, rates will increase, not because costs will have increased, but because there will be no reasonable expectation of the competition that normally holds prices down.

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[7] ICC Special Tariff Authority No. 82-1594.

Competition also will not hold prices down even in more densely populated areas. The antitrust laws will force each carrier to attempt to establish rates, particularly for accessorial services and storage in areas in which they do not maintain agents or facilities. Since carriers may not possess valid data reflecting the costs associated with service in areas they do not serve, rate setting will likely become the product of guesswork rather than sound business judgment calculated to increase traffic. Rather than run the risk of loss, carrier pricing practices will favor inflated rates and charges. To the extent lower rates or charges may accrue to the public as a result of carrier miscalculations, in the household goods field this will not translate into an increased number of consumer moves. As I have said, the decision to move is a personal judgment that is rarely if ever influenced by a carrier's charges. Unlike other enterprises, demand in the moving industry is fixed and cannot be significantly increased by lower rates.[8]

Another factor also mitigates against lower rates resulting in more traffic. In most moves, time is of the essence. The house has been sold or the lease has been terminated, so the move must be made by a date certain. Likewise, the consumer must move in by a date certain. Children must start school and parents must begin new employment. The storage of personal effects and hotel accommodations are expensive and would unreasonably strain the budgets of most households. Hence, the ability to perform the service when needed is an overriding factor that controls carrier selection and not rates. Lower rates are only determinative when all other facts are equal.

As previously noted, the ability to perform service is based on an infrastructure of owner-operators and agents. These persons provide the labor, equipment, and facilities necessary to move the consumers when and as needed. These persons are also paid on a percentage of revenue generated. Under the antitrust laws, these persons will be free to contract with whom they please, and any carrier that sought to restrain these independent entities from dealing with the carrier's competitors would expose itself to antitrust litigation. The tendency will be for owner-operators and agents to align themselves with those carriers that maintain the highest rates. The economic structure based on entities that perform only on obtaining a satisfactory level of revenue restrains the downward movement of rates and invalidates the free market principle that lower rates result in more shipments. On the other hand, collective ratemaking creates a stable rate structure that allows carriers not only to compete for all traffic but also to compete for the independent contractors and agents necessary for a competitive system.

G. Conclusion

Elimination of collective ratemaking will dismantle a fully integrated nationwide door-to-door moving network that presently offers consumers reasonable, non-discriminatory rates. In its place will emerge a free market where no one carrier could provide a nationwide service, with each carrier creating its own areas of dominance measured by the reach of its own agency system. In those communities where a carrier had little or no competition, rates will be raised to the maximum without fear of new market entrants or alienating customers that do not provide repetitive business. In those areas where competition exists, free market forces will not be controlling. Because lower rates do not necessarily result in an increase in market share in view of the importance of the timing of a move and an industry infrastructure that is compensated on a division of revenue earned, free market competition will not regulate rates and ensure that reasonable rate levels are maintained by carriers.

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[8] To more fully understand the pricing difficulties presented to carriers when they cannot jointly maintain rates applicable to areas they do not serve, I attach hereto as Appendix D excerpts from carrier statements to the Motor Carrier Ratemaking Study Commission that explain in the words of other carriers the difficulties presented by this prospect.

APPENDIX A

The relaxed entry standards resulting from the Commission's construction of the Motor Carrier Act of 1980 have had little effect on the number of motor carriers that are engaged in the transportation of household goods. Commission compiled statistics that purport to indicate many thousands of new carriers have been granted new operating authority since enactment of the MCA have no relevance in the case of houshold goods carriers. While the Commission does not compile operating authority statistics dealing exclusively with household goods carriers, statistics compiled by the Bureau indicate the number of carriers that have entered the moving industry since July 1, 1980. Those statistics indicate that 409 new carriers have become members of the Bureau since July 1, 1980. Since Bureau membership on July 1, 1980, stood at 1,642 carriers this would seem to indicate that the number of carriers that participate in the interstate transporation of household goods increased roughly 25 percent since enactment of the 1980 legislation. However, this is not the case. While 409 new carriers have become members of the Bureau, a greater number, 465, withdrew their membership from the Bureau.[1] The 465 carriers who left the Bureau did so for reasons other than discontinuance of their participation in the collective ratemaking process. One hundred six (106) carriers went out of business, 41 carriers sold or merged their opeating authority with that of other carriers and 318 carriers were simply removed from the Bureau's tariffs because they were unable to pay nominal participation fees suggesting that they are also out of business. This analysis indicates that the basic operating structure of the moving industry has remained constant and has not been significantly changed by the 1980 legislation.

Other Bureau statistics reveal that 607 Bureau carriers expanded the scope of their interstate opeating authority through Commission issuance of new certificates. This however has not resulted in any significant realignment of traffic between those carriers who were in the market prior to 1980 and those who expanded their authority after 1980. As far as the primary carriers of household goods are concerned, there has been no major shift in market share. In 1979, the 10 largest national van lines accounted for 75 percent of the total business transacted. In 1984, those same van lines continued to account for 75 percent of the business. This experience unequivocally affirms the position expressed by the Bureau in Congressional hearings prior to enactment of the HGTA. Specifically, the Bureau argued that any number of new ICC certificates that would authorize the transportation of household goods would have little effect on the basic structure of the moving industry. The agency system is what makes this industry function and not ICC certificates. It is a fact well known to those of us who are engaged in this business that without a sophisticated agency system consisting of van lines, carrier/agents and owner-operators no one can successfully engage in the transporation of household goods in a broad geographic area. This situation arises from the additional fact that demand for household goods service is not dictated by readily predictable traffic patterns. From year to year the points from or to which household goods carrier service will be required do not remain constant.

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[1] The Mover & Warehousemen's Association of America, the only other major household goods carrier bureau, reports 1980 membership of 381 carriers and current 1985 membership of 403 carriers.

Appendix B

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Financial Data And Ratios for the Consolidated Moving System of the Study Carriers
(Carriers, Agents and Owner/Operators)

Line No.	Item (a)	1983 A.R. Source (B)	1978 Consolidated System (c)	1979 Consolidated System (d)	1980 Consolidated System (e)	1981 Consolidated System (f)
1.	Current assets	Sch.200, 1.24*	$ 639,639,340	$ 689,854,551	$ 755,050,425	$ 777,613,867
2.	Net carrier operating property (owned)	Sch.200, L.27*	465,864,657	537,835,969	516,865,019	563,390,784
3.	Net Carrier operating property (owned plus leased to others)	Sch.332, L.13 minus L.24*	465,864,657	537,835,969	516,865,019	563,390,784
4.	Net tangible property	Sch.200, L.31*	549,117,828	614,889,720	630,265,252	629,735,710
5.	Intangibles	Sch.200, L.38*	32,314,534	25,574,138	42,492,958	21,604,124
6.	Current Liabilities	Sch.200, L.81*	463,546,490	539,345,193	573,638,812	529,075,367
7.	Long-term Debt	Sch.200, L.89*	301,181,896	276,527,606	328,619,719	268,560,419
8.	Shareholders Equity	Sch.200, L.109*	573,856,867	628,959,513	702,513,673	772,526,698
9.	Total carrier/non-carrier Operating Revenues	Sch.210, L.3	2,306,579,776	2,268,255,808	3,050,588,419	3,344,185,873
10.	Depreciation plus or minus depreciation adjustment	Sch.332, L.24 Col. c plus L. 35, Col. g minus L. 35, Col. H	90,485,683	82,118,378	105,846,636	111,589,919
11.	Total carrier/non-carrier operating expenses	Sch.210, 1.6	2,229,493,539	2,149,711,414	2,892,493,107	3,197,827,794
12.	Net carrier/non carrier operating income	1.9 minus 1.11	77,086,237	118,544,394	158,095,312	146,358,079
13.	Ordinary income before taxes	Sch.210, 1.23	78,616,807	110,556,126	147,324,080	144,574,262
14.	Net income or loss	Sch.210, 1.41	58,446,239	85,983,877	102,396,149	109,388,062
15.	Net income or loss plus or minus depreciation	1.10 plus 1.14	148,931,922	168,102,255	208,242,785	220,977,981
16.	Percent owned and leased to net tangible property (3 dec)	L.3 ÷ L.4	xxx	xxx	xxx	xxx
17.	Investment in owned and leased property plus working capital	L.1 minus L.6 X L.16 plus L.4	725,210,678	765,399,078	811,676,865	878,274,210
18.	Shareholders equity less Intangibles	L.8 minus L.5	541,542,333	603,385,375	660,020,715	750,922,574
19.	Long-term debt plus shareholders equity less Intangibles	L.7 plus L.18	842,724,229	879,893,181	988,640,434	1,019,482,993
20.	Operating Ratio (2 dec)	L.11 ÷ L.9	96.66	94.77	94.82	95.62
21.	Current Ratio (2 dec)	L. 1 ÷ L.6	1.38	1.28	1.32	1.47
22.	Ratio net income or loss to operating revenue (2 dec)	L.14 ÷ L.9	2.53	3.79	3.36	3.27
23.	Rate of return on owned and leased operating property plus working capital (2 dec)	L.12 ÷ L.17	10.63	15.49	19.48	16.66
24.	Rate of return on Shareholders equity less intangibles (2 dec)	L.14 ÷ L.18	10.79	14.25	15.51	14.57
25.	Capital structure ratio (2 dec)	L. 7 ÷ L.19	35.74	31.43	33.24	26.34
26.	Throw-off debt ratio (2 dec)	L.15 ÷ L. 7	49.45	60.79	63.37	82.28
27.	Ratio of long-term debt to shareholders equity less intangibles (2 dec)	L. 7 ÷ L.18	55.62	45.83	49.79	35.76

* Average of beginning and close of year.

Financial Data And Ratios for the Consolidated Moving System of the Study Carriers
(Carriers, Agents and Owner/Operators)

Line No.	Item (a)	1983 A.R. Source (b)	1982 Consolidated System (g)	1983 Consolidated System (h)
1.	Current assets	Sch.200, L.24*	$ 789,650,438	$ 1,026,876,750
2.	Net carrier operating property (owned)	Sch.200, L.27*	607,620,093	906,386,027
3.	Net Carrier operating property (owned plus leased to others)	Sch.332, L.13 minus L.24*	607,620,093	906,386,027
4.	Net tangible property	Sch.200, L.31*	670,840,295	908,789,524
5.	Intangibles	Sch.200, L.38*	40,223,691	50,205,744
6.	Current Liabilities	Sch.200, L.81*	522,288,705	722,438,114
7.	Long-term Debt	Sch.200, L.89*	342,175,807	407,706,585
8.	Shareholders Equity	Sch.200, L.109*	851,648,256	1,048,573,465
9.	Total carrier/non-carrier Operating Revenues	Sch.210, L.3*	3,264,302,556	4,199,178,217
10.	Depreciation plus or minus depreciation adjustment	Sch.332, L.24 Col. c plus L. 35, Col. g minus L. 35, Col. H	114,029,319	157,222,097
11.	Total carrier/non-carrier operating expenses	Sch.210, 1.6	3,145,119,230	4,011,969,407
12.	Net carrier/non carrier operating income	1.9 minus 1.11	119,183,326	187,208,810
13.	Ordinary income before taxes	Sch.210, 1.23	113,362,399	201,951,367
14.	Net income or loss	Sch.210, 1.41	82,368,926	144,614,491
15.	Net income or loss plus or minus depreciation	1.10 plus 1.14	196,398,245	301,836,588
16.	Percent owned and leased to net tangible property (3 dec)	L.3 ÷ L.4	XXX	XXX
17.	Investment in owned and leased property plus working capital	L.1 minus L.6 X L.16 plus L.4	938,202,028	1,213,228,160
18.	Shareholders equity less Intangibles	L.8 minus L.5	811,424,565	998,367,721
19.	Long-term debt plus shareholders equity less Intangibles	L.7 plus L.18	1,153,600,372	1,406,074,306
20.	Operating Ratio (2 dec)	L.11 ÷ L.9	96.35	95.54
21.	Current Ratio (2 dec)	L. 1 ÷ L.6	1.51	1.42
22.	Ratio net income or loss to operating revenue (2 dec)	L.14 ÷ L.9	2.52	3.44
23.	Rate of return on owned and leased operating property plus working capital (2 dec)	L.12 ÷ L.17	12.70	15.43
24.	Rate of return on Shareholders equity less intangibles (2 dec)	L.14 ÷ L.18	10.15	14.49
25.	Capital structure ratio (2 dec)	L. 7 ÷ L.19	29.66	29.00
26.	Throw-off debt ratio (2 dec)	L.15 ÷ L. 7	57.40	74.03
27.	Ratio of long-term debt to shareholders equity less intangibles (2 dec)	L. 7 ÷ L.18	42.17	40.84

* Average of beginning and close of year.

APPENDIX C

Currently there are 1,637 interstate certificated household good carrier members of the Bureau There are also 386 noncertificated movers who are Associate Members. Although the average dues paid per member equals only $321.00 per year, approximately 85% of the Bureau's membership pays minimum annual dues of only $200.00. For this minimal annual fee each member carrier is provided with (1) required agent of process service; (2) required ICC tariffs, including the nationwide Mileage Guide; (3) the ability to participate in nationwide ratemaking; and (4) a variety of statistical support information and publications regarding all facets of the moving industry.

Although the Bureau publishes a few specialized tariffs, the overwhelmining majority of the Bureau members use the Bureau Tariff Series 400-C and 104-B for the determination of rates and charges. Tariff 400-C, comprised of some 170 pages, contains governing rules, regulations and rates for over 1,600 member carriers. This tariff also contains a variety of accessorial rules, rates and charges, i.e. packing/unpacking, appliance service, etc. and different levels of rates and charges for each of the approximate 3,100 United States counties. Tariff 104-B contains 800 pages due to its individual carrier application, and additional price/service options applicable for the account of member carriers that are not published for the entire membership in Tariff 400-C. Tariff Series 400-C alone and/or in combination with Tariff Series 104-B, represent all of the published tariffs and rates used by over 1,600 movers to estimate and access proper rates and charges for interstate shipments of household goods.

Although we see little relevance or value in a reference to the number of shelves utilized by the Interstate Commerce Commission to maintain trucking industry tariffs and/or the number of rates contained in such tariffs, referenced Bureau tariffs consist of less than 1,000 pages and apply for the accounts of 1,600 household goods carriers. The number of rates in these tariffs numbers in the thousands. Of greater significance is the fact that Tariff Series 400-C alone contains all applicable rates and charges for transportation and storage of household goods shipments for any given movement between any two cities and/or counties in the entire United States (including Alaska), for the accounts of over 1,600 interstate household goods carriers. On an annual basis it is estimated that nearly two million shipments generating over three billion dollars in revenue are initially estimated, and ultimately billed, pursuant to the provisions of this Tariff Series.

This one tariff:

1. facilitates and insures a pricing mechanism essential to the continuation of a fully coordinated national moving system;
2. insures accurate estimates and assessment for all moving services for consumers;
3. facilitates the pricing of moving services between thousands of carriers, agents, independent companies and independent agencies throughout the United States;
4. provides a highly efficient, nationwide rate and tariff filing service for over 1,600 carriers, many of which are small independent movers.

Based on this, one simply cannot characterize the Bureau's tariff publishing and ratemaking practices as inefficient, costly or a "massive paper chase".

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your testimony you asserted that "without collective ratemaking the moving industry will no longer function as a fully coordinated nationwide moving system that transports and services consumer shipments at every location in the United States". In what specific ways is collective ratemaking necessary in the household goods moving industry?

Answer. Mr. Miller's detailed statement to the Committee deals at length with the integrated nature of the moving industry and how individual carriers who now number over 2,300 rely upon one another to perform complete, door-to-door moving service for consumers. The collectively formulated rates and charges that are contained in Bureau tariffs provide all household goods carriers with an agreed-to pricing structure that enables them to accurately prepare estimates of shipment charges for consumers prior to transportation in the form of written estimates as required by ICC regulation (49 C.F.R. § 1056.3), and adhere to those quotations throughout the course of the transportation performed regardless of the number of carriers that are called upon to perform services. Thus, collectively formulated tariffs allow carriers (1) to prepare accurate estimates of shipment charges prior to shipment; (2) provide an agreed-to price structure for all linehaul and accessorial services; and (3) eliminate situations in which one or more rates are quoted for required services prior to shipment only to have carriers refusing to perform services at those rates when the services are actually requested by interlining carriers. I believe Mr. Miller's complete statement to the Committee discusses this point on some detail and I refer you specifically to Appendix D to his statement which contains expressions from a number of HGCB member carriers discussing their reliance upon collectively formulated tariffs to permit the unrestrained interchange of shipments between carriers. This permits the continued maintenance of the "fully integrated nationwide moving system" Mr. Miller's statement discusses.

Question 2. You noted in your testimony the Interstate Commerce Commission's apparent unwillingness to administer the Interstate Commerce Act in a manner you believe is consistent with Congressional intent. What specific actions do you believe the Commission should take to better implement the Household Goods Transportation Act?

Answer. The principal concern of the Household Goods Carriers' Bureau is the economic state of the moving industry. Since we are primarily concerned with economic issues we will not comment on matters that bear on the ICC's non-economic regulation of the industry. On the economic side and with the single exception of its action on collectively proposed general increases, the Commission has not taken any steps that would enforce the ratemaking provisions of the Interstate Commerce Act. The Commission has not acted on its own motion nor has it acted in response to specific requests to address issues dealing with rate reasonableness, discriminatory ratemaking practices or allegations of predatory ratemaking. As the Bureau said in its full statement to your Committee, the Commission has been content to sit as an "impotent observer" of carrier pricing practices without regard to the consequences of those practices. As to what specific action should be taken obviously my industry believes the Commission should administer the ratemaking provisions of the Act.

Senator **PACKWOOD**. Thank you.

Mr. Gallagher.

Mr. **GALLAGHER**. Mr. Chairman, my name is Robert J. Gallagher and I am president of Quality Movers Systems, Inc. I would like to present testimony in this proceeding on the other side of the Household Goods Transportation Act of 1980.

Mr. Chairman, if there is one thing that the Household Goods Transportation Act of 1980 was designed to do, it was to encourage competition; and I want to bring to this committee some facts that I believe have militated against the encouragement of competition since the passage of that act.

I think that the committee and the chairman are familiar with some of these instances, but if I could just touch on them briefly. I would note that after the passage of the Motor Carrier Act that a series of actions by van lines have resulted in the carrier agents, the main strata of movers that provide service to the household goods people who are being transferred, have been systematically eliminated from participation in the networking systems of the various van lines.

Let us be specific. First, Atlas Van Lines in 1981 and 1982 decided that it would have no more carrier agents and it would require them to give up their operating authority. It allowed them to put the operating authority into another company that would be a total duplicate of the first company and would bear all the expense and burden of being a duplicating company.

Atlas had been formed by carrier agents in 1947 in Chicago, but it now has no carrier agents except for those agents who hold limited King pac or very minimal local authority.

United Van Lines has adopted rules, as described by the chairman in his testimony, that basically inhibit the right of the carrier agent to operate within the full scope of its operating authority. We have the president of United Van Lines here. He perhaps can define them more succinctly. But my understanding of them is that if an agent wanted to haul shipments that moved more than 1,700 miles he would be terminated; he no longer could be an agent for United Van Lines.

Next joining the same paralleling action, North American Van Lines has adopted very much the same procedures that Atlas has. You can take your authority and transfer it to another affiliated company. The difference in the North American situation is you can use a similar name, whereas with Atlas you could not even use a similar name. But you cannot be an agent for the van line and have operating authority.

Now, I understand that Mayflower has embarked on a similar program. You can have operating authority up to 450 miles, even though you may have nationwide authority, but if you want to operate beyond 450 miles you have to form a new company, have totally new facilities, and operate your authority in that new company.

Well, let us face the facts. What is the result of this? The middle strata of carrier agents are being driven out of the marketplace. We heard the chairman this morning explaining how the ICC had been impressed enough by the arguments to permit both the Atlas and the United pooling plans.

But what was the context of those arguments? It was, if you allow us to have all the members, all our agents, only provide service for us, then the six major van lines can be exceptionally competitive and we can go out there and slug it out.

But let us face the facts. If we remove the 2,200 carrier agents that were in existence at the time of the passage of the act, does that encourage competition or does it inhibit it or destroy it? When these six or seven remaining major carriers are the only ones who can provide interstate service in this country and when you consider that all of them are members of the same rate bureau and they all can discuss rates at that bureau, is that the type of situation that encourages competition?

I submit to this committee that it is not. The van lines want regulation and I submit to the committee that if they want regulation they should accept regulation or a proviso in the regulation that protects the right of the carrier agent to continue to operate during the period of time that there is regulation.

I came up with some language to this extent: Van lines shall not distinguish between agents with interstate operating authority or those without such operating authority, and van lines shall not terminate or refuse to accept any agent because of the reason that the agent has such authority, is acquiring such authority or is expanding such authority.

Mr. Chairman, I submit that this submission is much more in keeping with the intent of the Household Goods Transportation Act than allowing these carriers to be driven out of the marketplace. There will be no one to replace them. There will be six major carriers in this country and competition will wither on the vine.

For your courtesy in listening to me, I wish to thank you.

Senator **Packwood**. Thank you very much.

Mr. Gallagher, you indicated in your testimony that you almost think the local and regional companies would be better off under a totally deregulated environment, rather than the limbo that you are kind of in. Do I read that correct?

Mr. GALLAGHER. Yes; Mr. Chairman. The regulation that has been left in place has been interpreted by the Commission to confer such immunities that these processes have been allowed to be permitted. For example, in my testimony I pointed out how it would appear clear that the way that United had set up its allocation of markets would be a violation of the antitrust laws, because it divided it out between long and short haul markets.

United went before the Interstate Commerce Commission and that procedure that they had proposed was permitted by the Commission, even though its clear impact is anticompetitive. The carrier agents are not really out there looking for deregulation. They are all a little bit comfortable with regulation, but they are now in the worst of all worlds. The van line which were in place when the Household Goods Transportation Act was passed have been able to encompass or have been able to stake out their terrain, and these companies have not been able to do so.

So what we strongly suggest is, if there is regulation, there should be protection. But if there is not protection, there should not be regulation.

Senator PACKWOOD. Say that again?

Mr. GALLAGHER. If there is regulation there should be protection, but if there is not protection there should not be regulation.

Senator PACKWOOD. Yes; I think I follow that.

Mr. Baer, let me ask you a question on the point that Mr. Gallagher brings up. Why did some of the major lines prohibit carriers from acting as their own agents in transporting household goods under their own operating authority?

Mr. BAER. Mr. Chairman, I think Mr. Gallagher has a different set of facts than I do. I cannot speak to individual carriers or individual companies. I can speak to United.

In that particular situation, the Commission did approve our request for a change in our pooling order. We do not allocate markets, which is clearly a violation of the law. In 1980 we had 223 carrier agents. Since the change we have lost a total of two and we have gained 20-plus. I hardly think that that suggests that we are not pro-competitive, because certainly we are.

I think that there is another thing that has not been expressed, and that is the question of liability. You take any major van line and when that van pulls up that says North American, Atlas, United, whatever the case may be—and also on that van there may be "Packwood Moving and Storage. "Well, in our litigious society the liability runs back to the van line.

So there is a great deal of concern with the national brand identification, the liability, and so forth. But I do not think that there is any intent on the part of any major van line to reduce competition or to stimulate carrier agents being lost in the shuffle. In fact, our company is owned by agents who are carrier agents. Our board of directors, my bosses, are made up of carrier agents.

And certainly we have no desire to reduce competition. In fact, I think the facts would suggest that we are more pro-competitive than ever before. We are providing 30 and 40 percent level discounts in your peak season. I think hardly anyone could say that we are not very active in the marketplace.

Senator PACKWOOD. Want to comment, Mr. Gallagher.

Mr. GALLAGHER. Yes; Mr. Chairman. I believe it is a stated fact that if the carrier, as an example Bud Moving and Storage and other carriers, had wanted to continue to utilize their authority on a nationwide basis, they could not continue as agents of United Van Lines.

Senator PACKWOOD. Is that correct?

Mr. BAER. Yes, sir, it is. We have two service options which have been approved and the individual carrier agent may select one or the other. And that is based on a series of incentives. One is 750 miles, another is 1,700 miles.

In the case of Bud, Mr. Bud was one of the two who chose to go his own way, and we wish him Godspeed. But we do not see that that is a violation. Mr. Bud chose to run nationwide. That was not within the purview of our operational plan, it is plain and simple.

Senator PACKWOOD. Correct, Mr. Gallagher?

Mr. GALLAGHER. It is correct that those two companies left, and it is also correct that a number of companies, such as Santini and Setta, which have nationwide authority, have aquiesced in the United proposal and have withdrawn from the market over 1,700 miles. And I think that is an inhibition of competition.

Senator PACKWOOD. Mr. Rice, let me ask you a question about antitrust immunity for collective ratemaking, not from the standpoint of consumers but from the standpoint of the industry. Why is the continued immunity needed?

Mr. RICE. Well, I think from our standpoint, we are carrier agents and we need to know exactly what is happening in the marketplace.

Senator PACKWOOD. Would you not know it without the immunity? I mean, we know it in the airline industry by buying a book every 2 weeks that lists every conceivable fare arrangement you can think of, without any antitrust immunity.

Mr. RICE. I do not know the answer to that, Mr. Chairman.

Senator PACKWOOD. The information would be available, would it not? My hunch would be that it would be a wonderful market for somebody to fill if you had no antitrust immunity and no rate bureaus or anything else, that somebody would start publishing what different companies are charging.

Mr. RICE. I have Dr. Ruane with me, who is president of our association. Perhaps he can comment on that.

Mr. RUANE. Well, Mr. Chairman, the point is the association is favoring retention of collective ratemaking so that the various agents throughout the country would still have the ability to talk to one another through their tariff bureau, those who have their own operating authority, and that through that process they would know one another's various tariffs, through the costing programs that those tariff bureaus run.

Right now our major concern, for very practical reasons, not for any ideological reasons or political reasons, is that most local agents are not that familiar with their costs. They really have to reach a state of sophistication in their accounting practices and management practices——

Senator **Packwood**. Most local agents are not?

Mr. **Ruane**. They are not totally familiar with their total costs.

Senator **Packwood**. You mean they do not know their own costs?

Mr. **Ruane**. Yes, sir; that is correct. And this is an unfolding situation that the major carriers are trying to deal with, as well as the major associations.

Senator **Packwood**. I have heard that argument before in the trucking industry, where some of the local trucking companies allegedly did not know their own costs, therefore they needed a collective ratemaking benchmark so that they would know from what to discount.

Mr. **Ruane**. Well, I would not agree with that statement per se. I think the real question is that the agents and the van line in the moving industry are operating throughout the country, in all 50 States. Their costs are different in each locale, and they really do not know the exact costs of another agent in a different community.

But through the collective ratemaking process and following the tariffs with the bureaus, they are able to find that out and have some idea of what their respective costs are. I think we do have the experts here from the Household Good Carriers Bureau to address the mechanics of that.

But our concerns are very practical, and perhaps many people are shy and unwilling to admit that there are some problems in the way some of their accounting practices work.

Senator **Packwood**. You know, one argument that I have had a difficult time over the years grasping is the argument made by some businesses that they do not know their costs. For the life of me, I do not know how they stay in business if they do not know their costs unless they go to this rate chart and say, well, it seems to be $10 per 100, I guess that is what I will charge, without having any idea whether they are going to make money or lose money at apparently $10 per 100.

I just cannot understand how anybody could stay in business for any length of time without any idea of what it costs them to stay in business.

Mr. **Ruane**. Well, that very fact is now taking place. Many companies are going out of business, principally due to the fact that they have had troubles dealing with the competitive nature of deregulation; and when they did not know their costs, they are the ones that are going belly-up.

Senator **Packwood**. Now I am curious. If they do not know their costs, do you think maybe they should go belly-up?

Mr. **Ruane**. Yes, I think they should. In the marketplace, if the business is not managed properly and they do not know their costs, then eventually it will go out of business.

Senator **Packwood**. I love that statement—and then I will let Senator Pressler take over—that Fred Kahn made. He used to be Chairman of the Civil Aeronautics Board and was principally responsible for the deregulation of the airlines, and he was on a talk show, one of those morning news shows, a year or so ago. And the interviewer said: "Well, Professor Kahn, several of the airlines have gone bankrupt."

And he said: "Precisely; that is what we intended, and that is proof that it is working."

I do not know if the household goods industry shares the same view, but he did not intend that all airlines, no matter how badly run, make some money and well-run ones make a lot of money. He intended for the badly run ones to go out of business, when they finally learn their costs.

Mr. **Ruane**. I would defer again to the bureau. I think in their statement they have specific references to some of the financial problems of the industry, including some examples of companies who have gone bankrupt. And it is our opinion as a result of our discussions with our membership that this is not over yet, that you are going to see additional companies go out of business.

And again, you know, hopefully they will not, but if they do not get on top of their costs, then they should.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Mr. Chairman, I shall pass on questions here. I am mainly interested in the oversight of the Bus Regulatory Reform Act of 1982 and I am waiting for the next panel.

Senator **Packwood**. You have no other questions, either? I have got a couple more, then.

Mr. Baer, do you think you would ever move toward total deregulation of the household goods moving industry, exempting insurance and safety? We always set those aside when we ask that question.

Mr. **Baer**. Well, I think that is a hypothetical question, Senator, and I guess I really would rather not try to be a seer.

Senator **Packwood**. Why is it hypothetical? The administration has recommended it.

Mr. **Baer**. They have recommended it, but that is a long way from this Congress passing that.

Senator **Packwood**. If you take that attitude, you would be amazed what can happen.

Mr. **Baer**. I do not mean to be flip about it, but the question between knowing costs and going belly-up, I think it is a much deeper question than that. This is a very family-oriented type of business, where 5 years ago people were thrust into a totally new business environment. And I think, as the gentleman from DOT testified, we have done well.

But we have also had some hard lessons to learn, and everyone points out what a great year we had in 1979 and that maybe we will have a good one again this year, but we are a victim of our own press releases and there have been some very tough, lean years in between.

But we have come a long way in terms of competition, and I think we can adapt to most any situation. But we think that in 5 short years we have not really had time to get our feet on the ground and train a whole network of people. Dr. Ruane touched on it just a little bit.

Now, we do not know our costs. Now, that is not an indictment. The van line knows its costs, but you also have agents and you also have owner-operators. We have a three-tier structure, and bringing all of those costs to bear is where the bureau and the collective ratemaking comes into play.

Senator PACKWOOD. You mean to say at the end of the year, when your CPA gives you your audit, you do not know what it cost you to operate?

Mr. BAER. No, sir, I did not say that at all. We do know.

Senator PACKWOOD. You do know?

Mr. BAER. Right. But you understand, with carrier agents they may do things on their own authority and do.

Senator PACKWOOD. I understand that.

Mr. BAER. And the same is true with owner-operators. There are many operating relationships and agreements between an agent and an owner-operator as there are those combinations. So you have a whole series of numbers that have to come together, and we do not necessarily know what our agents do on their own authority. They are not required to share that information with us, nor do we coerce them in any way.

Senator PACKWOOD. And when they do that on their own authority, how does that affect their costs?

Mr. BAER. It does not affect ours at all because we are not even involved. However, they are running around the country, sir, in a United United United van.

Senator PACKWOOD. I am not sure what you are driving at. I understand they are going around in a United United United van, and down at the bottom of it it says "Rockefeller Enterprises."

Mr. BAER. We would be interested.

Senator PACKWOOD. But that does not affect your cost at all when they do that.

Mr. BAER. No, sir, it does not.

Senator PACKWOOD. So we can subtract that out from knowing your costs. Now, what can we not subtract out that makes it impossible to know your costs?

Mr. BAER. In terms of the van line, we do know our costs.

Senator PACKWOOD. So you could operate without collective ratemaking then, in terms of figuring your costs?

Mr. BAER. Well, as I said earlier, sir, I think we can adapt to any situation that might come along. We just are not in favor of that at this point in time.

Senator PACKWOOD. There is one other specific question. Could you operate without collective ratemaking and still know your costs?

Mr. BAER. I think it would be extremely difficult, the way the moving industry is structured, to do that.

Senator PACKWOOD. Then I want to pursue this. I thought you just said you know your costs.

Mr. BAER. I said the van line knows its costs. Now, when the van line is dealing with an agent in another part of the country——

Senator PACKWOOD. I just meant the van line. You could operate without the collective ratemaking and still know your costs?

Mr. BAER. I believe we could, yes, sir.

Senator PACKWOOD. Any other questions?

[No response.]

Senator PACKWOOD. Gentlemen, thank you very much.

Now we will conclude with Norm Sherlock, Lat Celmins, Paul Nagle, and Robert Molofsky.

Mr. Sherlock, go right ahead.

STATEMENTS OF NORMAN R. SHERLOCK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN BUS ASSOCIATION, ACCOMPANIED BY T.C. KNAPPEN, SENIOR VICE PRESIDENT, TRAILWAYS, INC.; LAT CELMINS, GENERAL COUNSEL, GREYHOUND LINES, INC.; PAUL NAGLE, ASSISTANT TO THE EXECUTIVE DIRECTOR, UNITED BUS OWNERS OF AMERICA; AND ROBERT MOLOFSKY, LEGISLATIVE DIRECTOR, AMALGAMATED TRANSIT UNION

Mr. **Sherlock**. Thank you, Mr. Chairman. Accompanying me today is Ted Knappen, senior vice president of Trailways, who has done considerable work with the ICC proceedings.

Deregulation has obviously created a very competitive environment and it is reshaping the industry. In some respects, however, the new law is not being implemented as it should. The ICC has followed a carte blanche philosophy in granting operating authority, making entry standards and a carefully balanced public interest test meaningless. The determination of fitness continues to be ignored.

As a result of this, this committee inserted section 215 in the safety bill last year, requiring the ICC and the DOT to promulgate good fitness standards and procedures to make them work. That has not been done yet. The ICC has disregarded the law by granting nationwide tour and charter authority to publicly subsidized mass transit districts, a matter which you have focused on earlier, Mr. Chairman.

Prohibitive legislative language is needed to make sure the ICC does not continue to violate the law. Sham filings where carriers file for interstate routes really to get point-to-point intrastate authority need to be stopped. And further action is needed to make sure that safety is not a casualty of deregulation, not only in terms of entry but in enforcement relating to daily operations.

Beyond deregulation, the single most important thing that will reshape the industry is the insurance problem we face today. Bus companies are being hit with astronomical premium increases. The question is what can be done about this? We do not think that the answer is to postpone the doubling of the Federal minimum insurance requirement that is scheduled to go into effect November 19.

Five million dollars is not much insurance when you think of a bus that carries 45 to 50 people. We believe the public interest warrants at least that much protection, and we are concerned about what the impact of uninsured and underinsured operators would be on the image of the industry and the ultimate public acceptance of bus travel.

We are very much concerned about enforcement, and that is an area we would like you to focus on. Underinsured and uninsured operators should not be allowed to run, for they will have a big and unfair advantage over legitimate companies who are in compliance.

We have asked that the ICC and the DOT work closely together in a strong program of enforcement, and suggest that this committee ask for periodic reports to be sure that it is carried out.

We have suggested the following steps be taken immediately at the ICC: First, to prepare a list of all certificated bus carriers and the amount of insurance that is required to be on file with the ICC. Working off that list, we will help the Commission find and deal with violators.

Second, notify all who do not have a certificate on file or whose certificate indicates they have less than $5 million in insurance that they must meet that level by November 19 or cease operations.

Third, to put into effect the expedited revocation proceeding rules proposed 3 years ago in Ex Parte MC-5. Sub-3 certificate revocation proceedings should be carried out against all who are not in compliance with the new standard. It is our view that the current monitoring and information process at the ICC and the standard revocation procedures are not adequate to deal with the situation we are in today.

We have made the following suggestions to DOT: First, to immediately write all bus operators and remind them of the $5 million requirement. That communication should advise that noncompliance will not be tolerated and that violators can be fined as much as $10,000 a day.

Second, to adopt a rule to require that all bus operators carry proof of insurance compliance in each vehicle.

And third, to step up detection and enforcement measures through roadside checks and whatever means will help pick up violators.

The Association and its membership stands ready to assist these two regulatory bodies in carrying out their responsibilities in these actions. All of this, of course, addresses the enforcement issue, but does not solve our problem of exorbitant rates and uncertainty of coverage. We recognize that to a large extent the outcome will be subject to the workings of the private market. However, we urge you to bring your considerable expertise to bear to help devise whatever means you can to assist the industry, particularly in terms of achieving a result which result in premiums reflecting the actual experience of the industry.

Beyond that, we ask that this committee look at several other options: First, passing legislation to require that all buses, whether for-hire or not, be required to carry proof of adequate compliance with Federal levels of insurance in their vehicles.

Second, explore the prospect of limiting the carriers' liability.

And last, legislation to require that insurance companies must provide at least 90 days' notice of cancellation.

That concludes my statement, Mr. Chairman.

[The statement follows:]

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT, AMERICAN BUS ASSOCIATION

I appreciate the opportunity to be here today to talk about the state of the intercity bus industry as we approach the third anniversary of the effective date of the Bus Regulatory Reform Act (BRRA). The American Bus Association represents more than 3,500 companies in the travel and tourism field including more than 1,000 operating companies providing bus regular route, tour and charter, airport and commuter services.

Right now, the bus industry is facing an uprecedented crisis caused by the unavailability of reasonably priced insurance. Since this has been by far the industry's major problem this year and will continue so for the foreseeable future, I will focus my remarks on the nature and extent of this problem, its causes and possible solutions. I will then review briefly the other major trends that have developed under the BRRA and make recommendations concerning further legislative adjustments.

I. ESCALATING INSURANCE COSTS ARE THREATENING THE EXISTENCE OF MANY BUS COMPANIES

At our just completed annual meeting, we held a number of meetings and special seminars on the insurance problems.

Just prior to the annual meetings, we completed a survey of 133 bus companies. The most recent average increase in premium of these companies ws a 199.8% increase.

Most of the companies in the survey provided us with their premium per bus both before and after their latest premium increase. On average, those annual premiums per bus went from $2,169.00 before the increase to $6,032.00 at present.

To put these figures in context, the average bus industry gross operating revenue per bus in 1984 was $91,188.00.[1] The average industry net operating profit per bus was $1,600.00.[2] Thus based on the survey results, the average premium cost per bus has gone from 2.4% of total revenue per bus to 6.6%, and the average premium increase is 2.5 times greater than the average per bus industry operating profit.

The problem is nationwide and is affecting both large and small carriers. Here are a few examples from around the Nation. A bus company in Killeen, Texas that operates 52 buses had its premium increased 371% to $377,000.00. A company in Abilene, Texas that has 12 buses saw its premium increased 461% to $106,000.00. A bus operator in Springfield, Missouri with 7 vehicles reported that its premium escalated 661% to $72,000.00, and finally an operator in Portland, Oregon reports that its annual premium on its one bus went from $5,550.00 to $29,987.00. This 545% increase occurred despite a perfect operating record over the last three years.

All of these operators have paid the price of operating legally, as have most ABA members. But our members' quandary is worsened by a lack of effective regulatory procedures to shut down operators who choose not to operate with the required minimum level of insurance. Most carriers in our industry conscientiously meet the minimum insurance standards even though the premiums have gone skyhigh, but a minority do not. These carriers pose a serious problem not only because they are inadequately covered, but also because their lack of insurance gives them a cost advantage over carriers operating legally. It is the responsibility of the Interstate Commerce Commission to shut these carriers down, but we believe that the ICC's enforcement efforts in this regard has not been adequate. We understand the Commission's problem with budget constraints but that does not mean that the lack of adequate enforcement should be overlooked, or disregarded anymore. Careful attention needs to be paid by Congress to this area.

The ICC keeps bus insurance certificates on file and has a procedure for getting a consent agreement from carriers who have received notice of cancellation, agreeing that no operations will be conducted until a new certificate is filed with the Commission. However, evidence indicates that enforcement of these consent agreements has been virtually non-existent.

Although the number of consent agreements has skyrocketed, we are not aware of any bus certificate of an active bus company that the Commission has revoked in the last six months because of a lack of insurance or of any Court restraining order that the Commission has obtained enjoining a bus carrier from continuing to operate without the requisite insurance.

In have met with Chairman Reese Taylor of the ICC within the last two weeks to express our concern about the Commission's enforcement effort in this critical area. Because we are aware of the personnel shortage at the Commission, I indicated that our members would be willing to work with the ICC to identify companies that are operating without adequate insurance so that these violations can be stopped. Chairman Taylor indicated his great concern about the problem and welcomed our cooperative proposals. I am hopeful that this meeting will be the start of an effective effort to enforce the new insurance minimums.

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[1] ABA annual report at page 17. Gross operating revenue was $2.279 billion and number of buses was approximately 25,000.

[2] Ibid.

The Department of Transportation also shares responsibility for ensuring that bus operators carry the minimum levels of insurance. Under Section 18(e)(1) of the Bus Regulatory Reform Act, the Secretary of Transportation has the authority to impose a fine of up to $10,000 a day for failure by a bus carrier to maintain adequate insurance levels. We are not aware of any fines that have been levied in the three years that this provision has been in effect.

This problem will obviously grow more serious when the insurance minimums are increased from $2.5 million to $5 million dollars on November 18, 1985. We believe that it is essential both for the safety of the traveling public and the health of our industry for the ICC and DOT to start enforcing the minimum insurance levels specified by law in an effective manner.

II. THE CAUSES OF THE CRISIS ARE BEYOND THE BUS INDUSTRY'S CONTROL ALTHOUGH THIS INDUSTRY IS UNIQUELY DAMAGED BY THIS CRISIS

The factor that one would anticipate would be the culprit in sharply higher insurance premiums would be a substantially poorer accident or loss record on the part of a bus carrier. But that is not always the case. In terms of the whole industry, it certainly is not.

The National Safety Council keeps accident statistics on 141 bus fleets nationwide that make up well over 90% of the intercity buses being operated in this country. Their statistics indicate that in 1982, this group had 4.56 accidents per million vehicle miles; in 1983, it had 4.14 accidents per million vehicle miles; and in 1984, the rate was 4.24 accidents per million vehicle miles. Thus, there was not only no substantial worsening of the bus industry's accident record in 1984, the 1984 frequency figure (4.24) was actually lower than the average frequency figure for the last three years (4.32).

Nor is there any indication that the dollar cost of these accidents has jumped so dramatically that it would justify the premium increases. In 1984, the insurance and safety account for Class I carriers, which includes liability costs for accidents, rose modestly from 55.8 million dollars in 1983 to 58.9 million dollars, an increase of 5.6%. This experience was typical of the experience over the last five years (1980–1984). During that time, insurance and safety costs have risen from 47.2 million to $58.9 million, a 25% increase, or an average annual increase of about 6%.

ABA surveyed the accident loss record for the last three years of the companies on the Board of Directors. The survey showed that in 1982, the companies responding had a per bus loss of $2,484.00. In 1983, the loss was $4,108.00, but almost half of this loss resulted from one accident costing $5 million dollars; without that accident, the per bus loss for the group would have been $2,395.00. In 1984, the per bus loss was $2,283.00. Thus the 1984 per vehicle loss was the least of the last three years and certainly does not justify the extraordinary increases that we have encountered in 1985.

Another factor that is clearly not the cause of the problem is the statutory increase in insurance minimums that goes into effect next month. Section 18 of the BRRA set the minimum liability insurance for buses in interstate service at $5 million dollars, but provided for a three year transition period during which the minimum rate is $2.5 million dollars. That transition period expires on November 19, 1985. It has been suggested that these higher minimums are contributing to the problem, but our statistics do not bear that out. Our study group of 133 carriers had an average liability coverage of $6.3 million dollars. Moreover, the trend among those who have renewed in the last six months has been to decrease their coverage to reduce the impact of the escalating premium (although still keeping the coverage above the $5 million dollar minimum), rather than increasing the coverage to adjust to the new statutory minimum.

We feel very strongly that the statutory minimum imposed by the BRRA should not be changed. It is the minimum that should be carried by responsible bus operators. On a 50 passenger bus, this is only $100,000 of insurance per passenger. Many people carry substantially more than that on their private automobile, and it truly is the minimum that an interstate carrier authorized to serve the public should carry.

At our just completed annual meeting, I asked the companies on our Board of Directors whether or not we should seek a change in the minimum insurance levels. The Board, which runs the gamut from very large carriers to very small carriers, voted unanimously in favor of keeping the $5 million dollar minimum.

There are several problems, however, with the higher insurance requirement, and again they relate to the enforcement question. Most certificated carriers have complied with the new standards already or will do so by November 19, but I have no doubt that there will be a minority of carriers that will not comply with the new standards. Given the present cost of insurance, the carrier not complying with the new standards will have a substantial cost advantage over the carrier operating legally. In the highly competitive environment created by the BRRA, this is a grave threat to the legal operator.

It is critical for the ICC and DOT to work together and to work with the industry to develop an effective program for expeditiously requiring all carriers to demonstrate that they have met the new standards or to cease their operations. Our recommendations for how this cooperative effort should proceed are set forth below in Part III in this statement.

Among other things the need for an immediately responsive and strong enforcement mechanism is essential. I have a also asked the DOT to send an immediate letter to all carriers warning them of the November 19th doubling of federal requirements and of the penalties for non-compliance. Additionally, I've requested a DOT rule be established to require that proof of adequate insurance be carried on all buses which operate on the highways and streets. Beyond that, we're encouraging stepped up enforcement through enhanced road checks to pick up violators.

It appears that the investment and loss history of the insurance companies themselves is the real source of our problem. The insurance companies have suffered recently from lower investment inome due to reduced interest rates and higher loss ratios caused by generally low premiums and escalating liability judgements. This has produced much lower surplus to premium ratios, thus limiting the insurance companies' ability to write new policies.

This has meant that insurance companies have been able to pick and choose the risks that they will insure. They are naturally going to choose the safest insurance risk they can find, and a jar of pickles sitting on a grocery store shelf is inherently safer than a container full of people driving down the highway.

While we recognize that this is a larger problem and recognize the insurance industry's problem, we are hard-pressed to understand why the bus industry should bear a disproportionate burden, particularly in view of our excellent safety and loss record. The transporting of people is viewed by insurance companies as inherently risky, of course, and the bus industry transports more people (350 million in 1984) than any other mode. Moreover, the bus industry has no general limitation on liability such as Warsaw Convention limitations that the airlines have for their international flights. In addition, the bus companies are generally small and unknown to the large insurance companies.

In addition, since bus operations are performed nationwide and are predominantly interstate in nature, bus companies must rely on insurance companies that are registered to do businees in most or all states. This even though there probably are local or regional insurance companies that are interested in writing bus policies, they are effectively precluded from the market because of the difficulties and expense of getting licensed in sufficient states to serve a substantial segment of the bus industry. This means that bus carriers, because of the interstate nature of their operations, are captives to a small group of large insurance companies with nationwide coverage, and when these companies choose to stop writing bus insurance, bus company options are extremely limited.

These factors taken together mean that no insurance company is now willing to insure the industry on a nationwide basis, and those few companies that are willing to provide insurance selectively to bus companies are able to charge exorbitant prices for the coverage. As a result, our survey has shown that the average per bus premium is now running at approximately $6,032.00, while the average bus losses in 1984 were approximately $2,200.00. Obviously, some relief is needed from this extraordinary situation.

III. SEVERAL STEPS SHOULD BE TAKEN BY THE CONGRESS, THE ICC AND THE DOT TO HELP THE BUS INDUSTRY WEATHER THE INSURANCE CRISIS

The Bus Regulatory Reform Act has spawned a highly competitive bus environment through the entry of hundreds of new bus companies. I fear that many of these companies, particularly those trying to live within the confines of the law, will be driven out of business by the unprecedented insurance crisis. We need effective administrative and legislative action to prevent this from occuring. The following are the specific actions that we believe are necessary.

A. The Commission must take immediate action to ensure that all certified bus carriers are complying with the new insurance requirements and to shut down the operations of those that do not comply

As I indicated in my meeting with Chairman Taylor, we are aware of the commission's enforcement personnel shortages and are ready to aid the Commission in its enforcement efforts.

The first step is for the Commission to prepare a list of all certificated bus carriers and the amount of insurance that is contained in the certificate of insurance that is required to be on file with the ICC. We have requested such a list, and I understand tht it is being prepared.

The next step should be to notify all of those who do not have a certificate on file or whose certificate indicates that they may have less than the $5 million dollars insurance, that they must have the higher limits on file by November 19 or they must cease operations. Furthermore, certificate revocation proceeding should be commenced against all those that are not in compliance with the new standards.

ICC field enforcement personnel should be instructed that enforcement of the new insurance standards should be given their highest priority. Any carriers who have been ordered to comply with the new standards or to cease operations who have done neither should immediately be subject to court action restraining them from further operations.

Such enforcement efforts may appear strict, but they are necessary to the survival of those carriers operating within the law. With insurance rates tripling on average and making up roughly 10% of revenue, a carrier operating with inadequate insurance will have a major cost advantage that will be crippling to its legally operating competitors. This is particularly true given the intense competition that now exists because of the BRRA and given the fact that we are heading into the winter months, the slowest time of the year for the bus business.

As I told Chairman Taylor in our recent meeting, our members are ready and willing to aid the Commission in its enforcement activities. Our members can monitor the activities of those who have been ordered to cease operations or whose certificates have been revoked because of inadequate insurance and will report those that continue to operate to the appropriate ICC field office. This should greatly expand the range of effective ICC enforcement.

I believe that it is also urgent for this Committee to continue to oversee the ICC's enforcement activities over these next few critical months. I urge the Committee to ask the Commission to report monthly starting on November 19 and continuing for at least six months, the number of bus carriers that are operating without the required $5 million dollars insurance, the number of carriers during that month that have been the subject of ICC enforcement action, either revocation proceedings or restraining action in court, and the results of these actions. Such oversight will insure that this matter is given the proper focus for the foreseeable future.

B. The Commission should put into effect immediately the expedited revocation proceeding rules proposed in Ex Parte No. MC-5(sub-3)

Almost three years ago, the Commission proposed in Ex Parte No. MC-5(sub-3) an expedited certificate revocation procedure whereby a carrier's certificate would automatically be revoked 90 days after cancellation of its insurance. ABA filed comments dated January 6, 1983 strongly supporting the Commission's proposal.

In its draft decision, the Commission noted that revocation proceedings for failure to maintain proper insurance "take at least five months and sometimes much longer" and deemed this process to be "time-consuming, inefficient and not in the best interests of the public". We agreed with that statement then and we agree with it now. Thus we urge the Commission to adopt the approach outlined in their original order served December 13, 1982, and we hope that the new expedited procedures are in operation by November 19, when the higher insurance minimums go into effect.

I would like to add two comments on this subject. First, 90 days is too long to allow a carrier to operate without the requisite amount of insurance. Rather than making the time period 90 days from the actual cancellation of the insurance, we suggest that it be 90 days from the notice of cancellation. Under present regulations, this means that a carrier would have a full 90 days to locate replacement insurance, but could only go 60 days beyond cancellation without having its certificate revoked. Moreover, if our proposal in Section F below concerning longer notice periods from the insurance companies is adopted, the revocation could be accomplished immediately upon the lapsing of the coverage.

Second, the proposal should be modified to provide that the automatic revocation process commences not only upon notice of cancellation, but also at any time when the carrier's insurance on file with the Commission falls below the statutory minimum. This would mean that all carriers who have not updated their policies by November 19 to a level at or above the new statutory minimums would become automatically subject to the expedited revocation process.

C. The Department of Transportation must use its enforcement authority to force interstate bus carriers, particularly uncertificated carriers, to comply with the new insurance minimums

Section 18 of the BRRA, which established the $5 million dollar minimum that becomes effective on November 19, 1985, empowered the Secretary of Transportation to make determinations that bus carriers "have knowingly violated this section or a regulation issued under this section . . .", and to assess civil penalties of up to $10,000 for each day of such violation. I am not aware that any civil penalty has been assessed in the first three years of this provision's existence despite the fact that it clearly was intended to be a strong enforcement mechanism.

Now that the insurance minimums are increasing, it is essential that the DOT move expeditiously to carry out its enforcement responsibility. As a start, we recommend that the DOT get the ICC listings of certificated carriers that do not have the $5 million of insurance on file with the Commission and write to each of these carriers immediately informing them that if such a certificate is not on file by November 19, they will be subject to a $10,000 a day penalty for each day that they operate after that date without such a certificate on file.

Then the DOT should follow up immediately after November 19, writing to those certificated carriers that the ICC updated list still indicates do not have the requisite minimum, informing them that they appear to be violating the law and indicating that enforcement actions will now commence. These letters and actions should be coordinated with the ICC to maximize rapid compliance with the new standards.

These actions should help in ensuring compliance from certificated carriers, but DOT has an equally important responsibility with regard to uncertificated carriers providing interstate commercial bus transportation. The minimum insurance levels proposed by Section 18 are not limited to certificated carriers; they apply to all interstate transportation of school buses going to or from school and buses with less than 16 individuals. This means that carriers providing transportation incidental to air; interstate mass transportation services and/or charter services provided by a state or local public body; and uncertificated entities such as churches or social groups providing for hire transportation on a full or part time basis are all covered by the requirements.

It may well be that there are more uncertificated for hire carriers operating without the requisite insurance than certificated carriers. A recent study by the Georgia Public Service Commission of carriers offering charter bus services in the Atlanta area indicated that of the 30 bus companies listed in the Yellow Pages, only one-third were certificated by either the ICC or the Georgia Commission.

With regard to these uncertificated carriers, the DOT should start aggressively enforcing the new insurance requirements. We believe that in its own inspections and in joint activities with the states undertaken through the MCSAP program and otherwise, identification and action against uncertificated carriers operating without the requisite insurance should be given the highest priority. Toward that end, all bus operators should be required to carry proof of adequate insurance coverage in their vehicles.

Here again, ABA members stand ready to assist the DOT in performing its responsibilities. Many of our carriers regularly see uncertificated carriers competing with them and believe that these carriers are operating without the requisite insurance. We are willing to provide information about these carriers on an on-going basis to DOT field offices if we know that expeditious enforcement action will be forthcoming. We believe that it would only take a handful of well publicized fines in excess of $10,000 to get the message to both certificated and uncertificated for hire passenger carriers that they must comply with the $5 million limits in performing interstate operations.

D. The committee should adopt legislation making the BRRA's insurance minimum clearly applicable to all commercial motor vehicles carrying passengers, and confirming that uncertificated carriers are to carry certificates of insurance in their vehicles at all times

The Motor Carrier Safety Act of 1984, which was largely drafted in this Committee, applied its safety requirements to all "commercial motor vehicles operating in interstate commerce to transport passenger or property" (49 USC Section 2503).[3] Thus the federal safety rules now apply to all buses whether or not they are certificated and whether or not they are operating in "for hire" service.

By comparison, Section 18 of the BRRA applies the minimum insurance requirements only to "for hire" passenger motor vehicles operating in interstate commerce. The insurance requirements thus do not apply to "not for hire" passenger motor vehicles operated by churches or social groups, even though these vehicles now are covered by the federal safety requirements.

This dichotomy makes no sense. This Committee determined, and we believe properly, that the public interest required that all buses, both "for hire" and "not for hire" should be covered by federal safety standards when operating in interstate commerce. For the same reason, these vehicles should be held to the same federal insurance standards when operating in interstate commerce, and we urge this Committee to adopt legislation accomplishing that result.

Another legislative change that we recommend is that all uncertificated carriers, whether "for hire" or "not for hire", be required to maintain certificates of insurance evidencing the minimum required insurance coverage, in their vehicles at all times. This is the only way that the DOT can effectively enforce the minimum insurance standards against uncertificated carriers. With the requirement, the DOT can make production of the certificate of insurance part of its inspection process and when the certificate of insurance is found not to be in the vehicle, the DOT can then commence civil penalty action under Section 18.

E. The committee should examine bus industry insurance rates and propose action to force these rates to reflect the insured's loss experience

Insurance rates now bear absolutely no relationship to a bus carrier's loss experience. Our surveys have revealed an average per bus premium of $6,032.00 while the average per bus loss was $2,283.00, and have turned up case after case of carriers with perfect or near perfect accident records getting hit with triple digit rate increases. Moreover, insurance companies that are quoting seem to go strictly on a per bus basis without regard to the amount of miles being operated by these buses, the type of operations being performed, or the prior records of the buses.

These insurance industry pricing practices put carriers who invest heavily in dollars and effort in a sound safety and maintenance program at a substantial disadvantage. This means that the efforts of this Committee to enhance the safety of interstate motor vehicle operations, as embodied in the provisions of the Motor Carrier Safety Act of 1984, are being thwarted by these practices.

Insurance rate regulation has long been a matter entrusted to the states, and we are not now suggesting that state jurisdiction be preempted. But the Committee should examine legislative alternatives to require insurance rates to reflect the safety records and performance of carriers providing interstate operations. Such legislation is a necessary adjunct to the Committee's efforts to create more effective federal safety regulation.

F. Insurance companies should be required to give bus carriers conducting interstate operations a minimum of 90 days notice of policy cancellation

At present, insurance companies are only required to give interstate bus carriers and the ICC 30 days notice of intent to cancel a policy. In troubled times like these, that has been disastrous for many bus carriers. 30 days has been insufficient for many carriers to locate alternative insurance, and our survey reveals that a substantial number of carriers have been forced to shut down temporarily because of their inability to come up with alternative coverage after having received notice of cancellation.

This obviously is very damaging to the riding public. Bus companies provide essential transportation service for both regular route and charter customers, and when those services are unexpectedly disrupted, it is a serious problem. This is why Section 16 of the Bus Regulatory Reform Act retained substantial regulation of discontinuance of bus service and why the ICC continues to require "reasonable" notice of any bus schedule change (49 CFR 1063.6(b)).

To minimize service disruptions caused by short notice insurance cancellations, we recommend that legislation be enacted requiring insurance companies to give bus operators at least 90 days notice of cancellation, which we believe is the minimum necessary time for a bus carrier in today's market to explore all possible ways of getting adequate coverage.

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[3] There were certain exceptions to this definition, but the only bus exception was for vehicles designed to transport 15 passengers or less.

G. Legislative remedies should be explored that would limit bus carriers' liability in such a way to bring insurance rates back down to a reasonable level for interstate bus carriers

We recognize insurance rates have become a problem for all businesses and that the subject of liability limitations is a hotly contested one. But we have tried to show in this statement that the bus industry is in a uniquely different position that calls for special consideration.

Transportation of people is viewed as an inherently hazardous risk by the insurance industry, and we carry more people than any other mode. Congress has also recognized the greater risks involved in transporting people by requiring much higher minimums for bus carriers than for all motor freight carriers, except hazardous material carriers ($5 million dollars vs. $1.5 million dollars). Unlike the airlines, we have no limit on any part of our liability such as the Warsaw Convention, and unlike Amtrak, we do not have the Federal Treasury's deep pockets to rely on.

The sum of these factors is that this industry is in an unusually disadvantaged position to deal with the insurance crisis, and if some efforts are not made to "level our playing field", many in our midst will have difficuty surviving. Since bus service is the only public transportation available to most towns and communities in this country, Congress should take the steps necessary to preserve that service.

Such steps should include appropriate limits for bus carrier bodily injury liability, the open ended nature of which is of great concern to the insurance industry. These limits should be high enough so that the injured are properly compensated, but they should provide a reasonable cap on liability so that insurance companies can more precisely assess the risk in interstate bus operations and thus not impose premiums based on the uncertainty of open ended exposure.

Limitations could also be placed on punitive damages. Punitive damages awards have become so large that insurance companies will no longer insure against them. Thus the bus operator will be solely liable for punitive damage awards. Here again, the open ended nature of this exposure is particularly damaging to the typical small bus operator. I understand that Montana has recently passed a statute limiting punitive damages, and I suggest that this Committee take a look at that new law as a possible model for federal legislation.

IV. THERE ARE SEVERAL OTHER PROBLEM AREAS UNDER THE BRRA THAT REQUIRE FURTHER LEGISLATIVE ACTION

Although insurance is by far the dominant issue in the bus industry and will be so for the foreseeable future, there are a number of other concerns that we have about the way the Bus Regulatory Reform Act has been administered by the ICC. I attach to this statement a detailed anaylsis of the activity at the Commission with regard to entry, exit and rate regulation.

There have been 3,988 operating rights applications filed with the Commission under the BRRA, and the Commission has approved virtually every one of these applications no matter what the circumstances. This has made a mockery of the carefully balanced four part "public interest" test that Congress drew in Section 6 of the BRRA.

There are several specific areas where the Commission's entry policies have gone so far beyond the intent of the drafters of the BRRA with such damaging consequences for the bus industry that these policies must be overturned by corrective legislation. Our greatest concern involves the Commission policy enunciated in MC-164973, Manchester Transit Authority Common Carrier Application, to grant nationwide charter and special operations authority to federally funded mass transit agencies. We believe that decision is in direct contravention of the Congressional intent embodies in the BRRA, and we have appealed the Manchester Transit case to the D.C. Circuit Court of Appeals (*American Bus Association* v. *Interstate Commerce Commission and United States* (No. 85-1270, D.C. Cir.)).

However, now that the precedent is set, we can expect the Commission to grant a flood of nationwide charter and tour applications by transit agencies unless swift Congressional action is taken. Thus the ABA strongly urges early Congressional passage of a statute prohibiting the ICC from granting charter and special operations authority to subsidized transit agencies.

There is nothing in the BRRA that indicates that Congress ever intended that the Commission would grant nationwide authority for subsidized transit agencies to compete against private charter and tour operators. Indeed, Congress established the more difficult "public interest" test for the grant of charter and tour authority to subsidized transit agencies, as opposed to the "fitness only" test for private operations.

In *Manchester*, the Commission totally failed to apply the "public interest" standard properly. Despite the fact that the key issue was whether or not Manchester Transit would use its federal subsidy directly or indirectly in charter operations competitive with the private sector, the ICC refused to conduct any meaningful inquiry on this issue rationalizing its refusal on the grounds that UMTA enforcement procedures "are sufficient safeguard to ensure that the fact that applicant received UMTA funding will not give it an unfair competitive advantage over competing privately funded carriers".

Yet the General Counsel of the DOT (which includes UMTA), in a letter to the Justice Department on Manchester Transit, specifically agreed with the ABA position that "charter authority should not be granted to a publicly funded carrier if a private carrier is able and willing to provide the service" and went on to note that:

"The ICC's heavy reliance on UMTA's regulation to prevent improper cross-subsidization is particularly troublesome to the DOT. UMTA's current regulation allows subsidized operators to engage in charter operations under certain circumstances. We are not satisfied with the regulation, however, which we consider very difficult to enforce effectively and, in any event, too permissive of charter operations by UMTA recipients. (The enforcement problem would be exacerbated if numerous publicly-funded carriers received charter bus authority)".

Rapid legislative action is needed to reverse the misguided policy established in Manchester; without such action, private charter and tour operators will be seriously damaged. There are approximately 5,000 transit buses in the United States compared with roughly 25,000 intercity buses, and the agencies that operate the transit buses obviously have major cost advantages over private operators because of their federal, state and local subsidies. These subsidized carriers must not be allowed to further erode the health of private bus operators.[4]

Another problem that needs to be corrected by legislative action is the misuse of the portion of Section 6 of the BRRA which empowers the Commission to issue a certificate which authorizes intrastate transportation over a route for which the carrier either holds authority to provide interstate transportation of passengers or is to be granted such authority. The purpose of this provision was to prevent states from limiting competition by means of "closed door" intrastate restrictions imposed on the operations of interstate carriers. But as noted in the original House Committee report (at page 34) this section was "not intended to reach beyond the point necessary to enhance the competiveness of interstate carriers moving pursuant to interstate certificates".

Since the enactment of this provision, it has become apparent that some carriers are applying for, and receiving from the Commission, certificates which enable them to provide little or no interstate service between the end points contained in an interstate certificate while operating extensive service between intrastate points on the routes that are particularly lucrative, such as the downtown of a major metropolitan area to that area's airport. Such "sham" operations evading legitimate state regulatory controls were not intended to be authorized by the original provision and should not be allowed to continue.

To accomplish this, we recommend enactment of legislation that requires that carriers' daily interstate operations be at least as frequent as the intrastate operations over routes covered by these combination certificates. Such legislation would not preclude the rendition of distinct interstate and intrastate operations in separate vehicles or during different times of the day as market needs dictate. But is would make clear that the intrastate operations conducted pursuant to an interstate certificate issued by the Commission cannot be more extensive than the underlying interstate operations.

If a carrier desires more intrastate authority then its proper remedy should be to go to the relevant State Commission to apply for such authority.

One other concern that we have in the entry area is the Commission's administration of the safety fitness standard in operating rights application cases. Although safety fitness is the only standard that is to be applied by the Commission in every bus application case, it was almost never used by the Commission in the first two years of the BRRA. To make the safety fitness standard more meaningful, Section 215 of the Motor Carrier Safety Act of 1984 required the DOT and the ICC to establish a procedure to determine jointly the safety fitness of carriers seeking new or additional operating authority.

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[4] Interestingly, in a decision written after the ABA Court Appeal was taken in Manchester and after the above described DOT letter was written, the ICC denied a nationwide charter and tour application by Cambria County (PA) Transit Authority on the grounds that the transit agency's state and local subsidies would give it an "unfair competitive advantage" that "could significantly distort the true competitive picture". Although this decision may indicate that the Commission is beginning to explore the transit agency issue more carefully, it is basically inconsistent both with *Manchester* and the Commission's general regulatory philosophy in this area. It does not, in our view, remove the need for quick Congressional action to limit transit agency charter and tour activity to their transit service area.

That provision has been in effect now for almost one year, and we are not aware that any procedure has been established or that there has been any increased Commission activity with regard to safety fitness. Section 215 required that the new safety fitness rules would be the subject of public notice and opportunity for comment prior to their adoption; such notice has not been forthcoming.

We believe that safety enforcement should be a high priority both of the ICC and the DOT and that that enforcement should start with meaningful regulation of the safety fitness certification standard, as called for in Section 215. Since Section 215 appears to have been virtually ignored by both agencies, we urge the Committee to require periodic progress reports on the implementation of the new safety fitness standards under that provision until such time as the Committee is satisfied that the Congressional safety mandate is being carried out properly.

In general, we believe that the Bus Regulatory Reform Act is a well balanced law, which took the first steps towards reducing unnecessary regulation by the ICC and the states.

Appendix

I. OPERATING RIGHTS APPLICATIONS AND INTRASTATE RATE AND EXIT PETITIONS FILED UNDER THE BUS REGULATORY REFORM ACT OF 1982 (THROUGH OCTOBER 11, 1985)

The following information covers notices of applications filed on and after November 19, 1982, the effective date of the Bus Act. These notices did not begin to appear in the *Federal Register* until December 13, 1982.

Total number of operating rights applications filed	3,988
A. Charter and special	3,346
(1) By first-time applicants	2,378
(2) By certificated carriers	968
B. Total regular-route applications	593
C. Restriction removal applications	26
D. Contract carrier applications	23
Grand total	3,988

II. INTRASTATE RATE CASES APPEALED TO THE ICC AND DECIDED AS OF OCTOBER 14, 1985

Since the enactment of the Bus Regulatory Reform Act of 1982, motor carriers of passengers have filed 62 petitions with the ICC seeking increases in intrastate passenger fares and express rates. The Commission has approved all such petitions except for two.

III. EXIT CASES APPEALED TO ICC AND DECIDED AS OF OCTOBER 14, 1985

Since the enactment of the Bus Regulatory Reform Act of 1982, motor carriers of passengers have filed 46 petitions with the ICC seeking permission to discontinue intrastate regular-route service. The Commission granted 38 applications and the remainder were denied on the merits or on procedural grounds. (4 petitions pending).

Senator **Packwood**. Thank you.

Mr. Celmins.

Mr. **Celmins**. Thank you, Mr. Chairman and members of the committee.

I am Lat Celmins of Greyhound Lines. We have now had 3 years of working experience with the Bus Act. Generally we support and embrace what we believe is the Interstate Commerce Commission's fair and reasoned implementation of the Bus Act. The Bus Act is working. We believe that objective evidence establishes that its implementation has significantly benefited the vast majority of bus riders. Studies by the ICC and the Report to the President and the Congress by the Rate Study Commission support our conclusions.

Indeed, we believe but for the Bus Act the bus industry would have been in an extremely perilous position because of intensive, totally deregulated intermodal competition and declining passenger demand. In our view it would not be an overstatement to say that but for the Bus Act the future of the intercity bus industry would have been in doubt. This conclusion has substantial credibility when one considers that our deregulated competitors, largely subsidized in many instances, can instantly adjust prices, service, and capacity to changing market conditions, whereas the bus industry under regulation was frozen in place and could only respond at a glacial pace.

We believe that the bus traveler has benefited. Literally hundreds of new companies have come into the marketplace, offering charter, tour, and regular route services. Price competition is intense in all segments of the industry, and the variety of service options has multiplied.

On the whole, the bus industry is systematically adjusting its capacity to consumer demands. These changes will continue in the future.

I would like to briefly touch on the significant aspects of what Greyhound has done under deregulation. Our company anticipated the Bus Act and commenced a fundamental re-examination of its routes, rates and services. Upon the advent of the Bus Act, Greyhound's transportation system, which had been frozen in place for nearly a half a century, was permitted to thaw. Greyhound implemented major restructuring in every aspect of its business.

We did discontinue schedules, many of which were operated, however, to satisfy parochial concerns, and many of which were handling only one or two passengers. I would like to indicate that at the present time Greyhound has no ICC exit applications on file. We have no discontinuance matters pending before the ICC. But with the discontinuances, there was a corollary. Greyhound simultaneously entered new markets, markets not served by any carrier, or in some instances served only by one carrier. Through these actions, we always brought high quality service and price competition.

In the pricing area, the hodge-podge of rates and mind-boggling complexity of rate quotations were eliminated by the implementation of a mileage scale for interstate and intrastate application.

This process is still unfolding. Under this process, Greyhound seeks to implement a mileage scale which is equivalent both for interstate and intrastate application. In the service area, we have become a consumer-driven company. I know that there were several concerns expressed this morning by Senator Pressler regarding rural America.

We have undertaken several initiatives as part of our free market response to serve rural America. We think one of the most exciting undertakings for Greyhound and indeed the future of the bus industry is our franchising program. This program was introduced early in March of this year. It is a true franchise, much like the typical McDonald's, Burger King, or hotel franchise.

Greyhound licenses its logo, color scheme and name, and business systems to the franchisee. The franchisee, however, operates as an independent enterprise, and obtains its own operating rights. Greyhound provides operating systems covering all aspects of bus operations. The franchisee's business is conducted strictly in accordance with Greyhound's quality standards and, as a result, a franchisee's service is indistinguishable from Greyhound's own service.

Regular route, package express charter, and special services are all product lines which will be franchised. As a result of this franchising effort, we believe there will be numerous benefits to the traveling public, and as far as we know this franchising concept is unique to the transportation sector. Bus service will be provided in new areas where none has now existed. Bus services can be provided at lower costs in many markets because of the lower cost structure of the franchisees. Greyhound operates on a marginal basis. The franchisee could provide service on a profitable basis. There is a larger bus network available to the public.

This program has been unfolded slowly and deliberately but at the current time we have six franchisees operating some 2,700 daily route miles. It is impressive to note that two franchises that were operating as independent operators now have increased their revenues approximately 250 percent as Greyhound franchisees.

We have a heartland policy where we are redirecting our efforts to serving cities of 10,000 to 15,000.

I see my time is up, but I know Senator Pressler was inquiring about Section 18, and contracting for rural bus services. We have initiated that process with one State, and we will be happy to meet with Senator Pressler or anyone else to discuss, what we believe are ways where we can meet rural transportation service needs under Section 18 contracting opportunities.

Through our heartland policy, while we have seen in general that the regional airlines have invaded the larger markets, we find that a market niche is found in serving cities of 10,000 to 15,000.

Thank you very much.

[The statement follows:]

STATEMENT OF LAT J. CELMINS, SENIOR COMMERCE ATTORNEY, GREYHOUND LIMES, INC.

Mr. Chairman and members of the subcommittee: Good morning—I am Lat J. Celmins, senior commerce attorney—Greyhound Lines, Inc. We at Greyhound appreciate your invitation to appear and offer our views at this third annual oversight hearing of the Bus Regulatory Reform Act of 1982 ("Bus Act"). We have now had three years of working experience with the Bus Act. Generally, we support and embrace the Interstate Commerce Commission's ("ICC's") fair and reasoned implementation of the Bus Act. The Bus Act is working, and objective evidence establishes that its implementation has significantly benefited that vast majority of bus riders.

Studies by the ICC and the Report to the President and Congress by the Rate Study Commission support our conclusions. From our perspective and based on our experience, we can well echo the findings of the ICC's Office of Transportation analysis, the intercity bus industry study and report on the initial impact of the Bus Act and status of the intercity bus industry:

> The BRRA is working, Actual and potential competition rather than regulatory decree are slowly becoming the primary determinants of fare and service levels in the industry. (p. IX).

We also ECHO the findings and conclusions of the report to the President and Congress of the United States submitted by the Motor Carrier Rate Making Commission May 15, 1984 which finds:

"The evidence clearly shows that the implementation of the Bus Regulatory Reform Act has significantly benefited the vast majority of bus riders." (p. X).

During the intervening year since this study and report were prepared, its conclusions have been only strengthened; and the results of the Bus Act are even more positive. Indeed, but for the Bus Act, the bus industry would have been in an extremely perilous position because of intensive, totally deregulated, intermodal competition, In our view, it would not be an overstatement to say that but for the Bus Act, the future of intercity bus industry would have been in doubt. This conclusion has substantial credibility when one considers that our deregulated competitors can instantly adjust prices, service and capacity to changing market conditions, whereas the bus industry under regulation was frozen in place and could only respond at a glacial pace.

THE DYNAMIC TRANSPORTATION ENVIRONMENT

The clearest conclusion one can draw from deregulation of the various transportation industries is that consumer have immensely benefited. Wide publicity and high visibility have been given to extremely competitive fares and bountiful service options. For passenger carrying modes, and particularly the airlines, discounted fares are the norm rather than the exception. In spite of years of inflation, consumers have the benefit of low airline fair levels which were last experienced under regulation decades ago.

The bus travelers have also benefited. Literally thousands of new bus companies have come into the marketplace offering charter, tour and regular-route services, Price competition is intense in all segments of the industry, and the variety of service options have multiplied. On the whole, the bus industry is systematically adjusting its capacity to consumer demands. These adjustments will continue in the future.

VESTIGES OF THE "PUBLIC UTILITY MENTALITY" ARE EVAPORATING

While there are some lingering effects, the public utility regulatory mentality is rapidly becoming extinct. The "public utility mentality" is a mind set common to regulated industries—regulators and regulated alike, It is an inescapable result of regulation. This mind set inhibited innovation, stifled experimentation, and precluded flexibility. Its inherent evil was that it deprived both the carrier and the customer of the benefits of competition.

From the carrier's perspective, it became a security blanket insulating managers from the intense forces of the marketplace and, at the same time, provided them with a readily available excuse for the lack of innovation and perpetuation of the status quo. Its battle cry was "can't do." Examples were legion.

Under regulation the carrier could not implement market responsive pricing—rate bureau's controlled price levels, Price discounts and the bald eagle were equally common. Under deregulation, carriers must instantly implement price changes responsive to consumer needs and competitors' actions.

Under regulation, bus companies could not provide door-to-door pickup and delivery services for their package express shipment. Consequently, the bus industry's market share of small parcel shipments drastically eroded. Package express shipments were lost to aggressive, deregulated competitors such as Federal Express and others, while Greyhound and other bus carriers were tilting at the regulatory windmills, Under deregulation, Greyhound implemented door-to-door pickup and delivery services for its package express customers—virtually throughout the Nation.

Under regulation, Greyhound's system of pricing was an incomprehensible web of tariffs and rates. The regulatory barriers to rate simplification were insurmountable. Under deregulation, Greyhound and the bus industry have greatly simplified passenger fares by implementing mileage zone fares.

Under regulation, schedules and buses were run whether full or empty. Service patterns could only be altered by the regulator and resort to the regulatory maze and its complex procedures. Under deregulation, passengers and their demands alter service. Buses are operated where the passengers are. The hallmark of deregulation is innovation and new programs, symbolized by a "can do" attitude.

It is true, that there are still pockets of this "public utility mentality" among a small percentage of state and Federal regulators, and perhaps even among the bus companies. These individuals are increasingly becoming smaller in number and their voices are no longer a din, but merely a whisper.

ACTIONS UNDER DEREGULATION

Our company, in anticipation of the Bus Act, commenced a fundamental reexamination of its routes, rates, and service. Upon the advent of the Bus Act, Greyhound's transportation system, which had been frozen in place for nearly half a century, was permitted to thaw. Greyhound implemented major restructuring in every aspect of its business. We discontinued schedules—many of which were operated to satisfy parochial concerns and only handling one or two passengers. This process of restructuring has now been completed. There is a corollary to route discontinuances. Simultaneously, Greyhound entered new markets—markets not served by any other carrier or markets served by only one incumbent carrier. Through these actions, we always brought high quality service and price competition to new markets.

In the pricing area, the hodgepodge of rates and mind boggling complexity of rate quotations were eliminated by the implementation of a mileage rate scale for interstate and intrastate application. This process is still unfolding on the State level.

In the area of service, Greyhound adjusted its schedules to customer demand, engaged in massive marketing programs and, consequently, has now become a consumer driven company.

Deregulation has permitted us to embark on positive initiatives for the benefit of the consumer, some of which are:

1. Franchising.
2. Accounting office consolidation.
3. The Heartland Policy.
4. Airport Services.
5. Military Programs.
6. Innovative Marketing, and consumer programs.

FRANCHISING

Perhaps the most exciting undertaking for 1985, and indeed the future of Greyhound Lines, is our franchising program. This program, introduced early in March of this year, is a true franchise, much like the typical McDonald's, Burger King or hotel franchise. Greyhound licenses its logos, color scheme, name and business systems to the franchisee. The franchisee, however, operates as an independent business enterprise and obtains its own operating rights. Greyhound provides operating systems covering all aspects of bus operations, driver training, accounting systems, equipment maintenance, sale of tickets, and marketing assistance, among other things. All of the franchisee's business is conducted strictly in accordance with Greyhound's quality standards. As a result, the franchisee's service is indistinguishable from Greyhound's own service. Regular-route, package express, charter and special services are all product lines which will be franchised. In consideration of the franchise, the franchisee pays Greyhound royalty fees.

This concept of franchising is unique to the transportation sector, and it provides the traveling public numerous benefits:

1. Bus service will be provided in new areas where none now exists.
2. Bus service can be provided at lower costs in many markets because of the lower cost structure of many franchisees.
3. Bus service will be provided in areas where Greyhound currently operates service on a marginal basis, but where the franchisee could provide the service on a profitable basis.
4. There is a larger bus network available to the public.

The franchise program would have been impossible to implement under regulation. Under regulation it would have been practically impossible for Greyhound to exit a route and the franchisee to obtain operating rights. Such efforts would have placed the potential franchisee in an incredible regulatory morass, taking months and perhaps years to accomplish. With deregulation, operating rights are readily obtained by the franchisee, and Greyhound is readily able to exit the route.

The franchise program has been unfolded carefully and deliberately. Despite hundreds of serious inquiries, Greyhound has been deliberate in initiating its franchising program to insure that the best possible franchisees are selected. Today we have six well-established, regular-route franchisees in diverse geographic areas of the country operating some 2,737 daily route miles. Most of this service was not previously provided by Greyhound.

Routes	Route miles	Daily schedules
Texas Bus Lines, Inc.:		
Dallas, TX-Meridian, MS	563	8
Houston, TX-Galveston, TX		5
Kerrville Tours, Inc.:		
Baton Rouge-Shreveport, LA	567	8
Texarkana-Shreveport, LA		4
Tyler-Beaumont, TX		2
Delta Bus Lines Inc.:		
Memphis, TN-Baton Rouge, LA	526	4
Greenville-Jackson, MS		4
Northwestern Stage Lines, Inc.:		
Spokane, WA-Pendleton, OR	538	4
Lewiston-Boise, ID		2
Raz Transportation Co.: Portland-Astoria, OR (2 routes)	231	4
Rainbow Coach & Tours, Inc.:		
Bay City-Petosky, MI	312	2
Bay City-Alpena, MI		2
Total	2,737	

The franchisees' operating performance thus far has been impressive, for example, two franchisees who were operating over the same routes as independent operators, now as franchisees, have increased their revenues 246 percent and 251 percent, respectively. This impressive data demonstrates that: the public has benefited by new, quality bus service which was not previously available; Greyhound has benefited by strengthening all of its bus services; and the franchisee has benefited financially.

CONSOLIDATION OF ACCOUNTING OFFICES

Deregulation requires that carriers know their true costs and revenues precisely, not in a general way, but with scientific precision for individual routes and schedules. Under regulation, cross-subsidies were found on the regulatory principle: that one takes the good with the bad, profitable with unprofitable, because profitable routes and services subsidize unprofitable ones. The regulator was only concerned with the carrier's collective financial results. Accordingly, the so-called "barrel accounting" method was generally utilized. The carrier merely accounted for all revenues and costs, and whatever was left over was profit. This principle failed completely when all of the carrier's services were unprofitable, and it failed even more miserably when the carrier was faced with intermodal competition. The archaic accounting systems which were in place under regulation were simply unsatisfactory in the deregulated environment.

Consequently, a major objective undertaken by Greyhound was the consolidation of all of our accounting services and our two major accounting offices in San Francisco and Cleveland, into one new facility in west Des Moines, Iowa. Our consolidated accounting office has the most modern and sophisticated systems available, a complete management control system, sophisticated computer equipment and other state of the art accounting equipment; such as, a scanner for recording data from all tickets and busbills. A beneficial side effect is that Greyhound will be able to provide these accounting services at a lesser cost and on a more efficient and timely basis for itself and its franchisees.

THE HEARTLAND POLICY

With the ever changing dynamics in ths bus industry, Greyhound necessarily had to analyze and define its market with greater precision. The impact of regional and some trunk airlines on the consumer has been significant, but the impact on bus companies has been nearly catastrophic. City pairs which were 200 to 500 miles apart were historic "bread and butter" bus markets—no longer. Low cost regional airlines have penetrated these markets and have become ferocious competitors. Bus industry market share has dwindled in the face of this onslaught.

Greyhound has responded. Greyhound has redefined its capabilities and has identified a market segment in America's heartland: Cities of 10,000 to 15,000 where even low cost regional airlines are incapable of providing efficient service. Greyhound has found that these markets offer a significant opportunity and present bus companies with solid market niche for a financially viable regular-route structure. Greyhound has actively pursued this heartland policy and is structuring its marketing and services to reach these potential passengers.

In conjunction with its heartland policy, Greyhound is working with several States (Wisconsin, Pennsylvania and New York) in order to provide bus service to rural America and small rural communities on a contract basis. In those areas where it is not otherwise economically viable to provide regular-route, scheduled bus service, Greyhound has entered into operating contracts or purchase of service contracts. The nature of these contracts varies, depending upon the legal structure of the particular State program. Generally, however, the arrangement is such that revenues generated from the service form a part of the carrier's compensation. As a result, for as little as 30¢ to 50¢ a mile, a State agency may purchase bus service where none previously existed or where none would otherwise be available. These contracts have been well received by the States because Greyhound provides reliable, cost-efficient service. We are optimistic that the purchase of service contracts will increase in the future.

AIRPORT SERVICE

Greyhound has followed the old adage "if you can't beat 'em, join 'em" in the institution of its airport services. Throughout the United States, we have initiated regional bus service to and from the Nation's airports. Today, Greyhound serves some 29 major airports in regularly scheduled bus service. (Attachment A, taken from Russell's Official National Motor Coach Guide, identifies the cities and time schedules of Greyhound's operations.)

We have found that with increasingly competitive airline fares, many potential air travelers in regional cities and towns surrounding the airport, would like to avail themselves of low cost air services if there were convenient ground transportation to or from the airport. Greyhound's scheduled airport bus services provides just that. For example, Greyhound operates 17 daily schedules between Milwaukee and Chicago's O'Hare Airport, a distance of approximately 100 miles. Similarly, Greyhound provides 17 daily schedules between Madison, Wisconsin and Chicago's O'Hare Airport, a distance of 140 miles. Greyhound's current one-way fares are $7.00 and $12.00, respectively.

Greyhound also has coordinated bus and airline schedules and Greyhound's regular-route service is reflected in at least one airline's time tables. (Attachment B.) Thus, Greyhound has introduced a new concept of intermodal bus—airline service for the benefit of the public. Collectively, we believe that the traveling public is afforded better, superior service at a lower cost than before deregulation.

These airport services would not have been possible under regulation. Indeed, under regulation, Greyhound attempted, but was unable, to provide service to the Chicago's O'Hare Airport, because it was frustrated by State and local regulations. We believe that this dynamic area will continue to grow and develop in the future.

MILITARY SERVICE INNOVATIONS

The deregulated environment permitted us to call on our past experience and develop programs for the military. A new concept called the "Ameripass Military Leave Fare" became effective last November, 1984. (Attachment C.) Under this program, the 15- and 30-day Ameripasses were discounted 50 percent and made available to active duty personnel, retirees and dependents. This is a long-term effort through the end of 1986, at which time we will assess its success for possible extension beyond that date. From January 1 through June 30 of this year, we sold 7,124 tickets under this program totaling in the amount of $826,000.

Innovation was evident in the package express area. Under Greyhound's military package express program, retirees, activity duty personnel and their dependents may ship personal packages, up to 100 pounds, anywhere on the Greyhound system for not more than $10. Parents of military personnel can ship packages to their children at the same rate. This program generated revenues of $665,807 between January 1 and June 30, 1985.

We are testing a 25 percent discount off of standard fares at Fort Knox, Kentucky. This program has been so effective that we have extended it.

Another marketing program is called "pride of the corps" which is designed to permit Marine recruits at Parris Island to purchase round-trip tickets at a 25 percent discount and mail them to family members to attend Marine recruit graduation ceremonies.

The foregoing is representative of the innovation and creativity which a deregulated environment unleashes. Other programs and efforts will be undertaken in the future.

MARKETING INITIATIVES AND CUSTOMER SERVICE PROGRAMS

There have been many, and there will be more, innovative marketing programs in the days and months to come. We will continue to be vigorous and innovative in our marketing efforts. Greyhound's marketing creativity has been unleashed. Since deregulation, we have increased our advertising budget and undertaken major advertising campaigns directed to our major market segments. Typical of the many programs which we have instituted in the last few years is the "college program." Under the "college program," Greyhound offers college students a free trip when three trips are taken. This program is promoted in the media designed to reach the student market. (Attachment D.)

Similarily, we have identified the Hispanic population as an important bus-riding market segment. We have specifically targeted our advertising to the Spanish media, produced promotional pieces in Spanish and have instituted a toll-free, Spanish speaking information service. (Attachment E.)

Deregulation has also stirred our corporate social awareness. New brightly-colored posters for Greyhound's expanded "Don't Rely on Strangers" program are prominently displayed in Greyhound's terminals throughout the country. This program is an informational billboard campaign designed to put runaway teens in contact with people and organizations who may be able to help them. (Attachment F.)

Greyhound's widely publicized "Let's Find Them" program is helping locate missing children and reunite them with their parents or guardians. This program is conducted in cooperation with the National Center for Missing and Exploited Children. Brightly colored posters attract the attention of the public in Greyhound's terminals and nearly 2,000 commission agencies. Greyhound will provide free bus transportation to reunite missing children with their families. (Attachment G). These are but a few of the marketing programs which we have undertaken.

DARK CLOUDS ON THE HORIZON

As I have noticed, we warmly and positively embrace bus deregulation and the ICC's implementation of the Bus Act. The transition from regulation to deregulation, however, has not been without its problems. Competition for intercity passengers is extremely keen. Markets change quickly, and market opportunities appear and equally quickly disappear unless responsive business actions are taken. We see competition intensifying in the future and benefiting the consumers. There are, however, some dark clouds on the horizon.

INSURANCE

Liability insurance premium costs have sharply escalated for the bus industry. The United Bus Owners Association's recent filing with the ICC reflected that bus insurance premiums have increased for some carriers as much as 700 percent. These premiums are a new and unanticipated increase in costs. Because of its fine safety record, Greyhound has not been impacted to the same degree as smaller carriers but, nevertheless, insurance premium costs have escalated dramatically even for us, and there may be as much as a 350 percent increase in 1985 over 1984 costs. The increased premium costs in our view are not related to deregulation, but rather, these increased costs are attributable to insurance industry pricing, escalating casualty claim payments, decreasing returns on investment, and changes in competitive insurance industry practices.

Lest our position be misunderstood, we fully, completely and unequivocally support the increased insurance limits of $5 million dollars effective November 19, 1985 applicable to all interstate passenger carriers. In the modern world, any responsible carrier must have liability coverage of at least that amount. In today's world, it is not uncommon for plantiffs to assert multi-million dollar claims and any lesser minimum insurance requirementm would be irresponsible. Greyhound, for its part, has intensified its safety efforts and programs in order to minimize potential claims. Our response is to operate a safer and better bus line. The regulators, for their part, can be a positive force. Their enforcement of safety standards and insurance requirements for all carriers will, hopefully, eliminate the high risk carriers who unfairly increase insurance premiums for all. Much will no doubt be said in the future regarding this issue. We, on our part, encourage full discussion of all issues and support any effort that will reduce and moderate insurance premium costs, but we do not believe that additional regulation or governmental intrusion is the answer.

FUTURE REGULATORY DIRECTION OF THE ICC

As we have said, the ICC has reasonably and fairly implemented the Bus Act. We have a major concern, however, regarding the future direction of the ICC. In several notable instances, a minority of the Commissioners has attempted to slow down and perhaps even reverse the direction of deregulation. Greyhound has undertaken significant actions and invested millions of dollars in reliance on continued, fair and reasonable implementation of the Bus Act's deregulation mandate. Inasmuch as this collegial body of Commissioners will shortly change in response to a statutory mandate (from seven to five Commissioners), there is concern on our part that the philosophical direction articulated by the minority may become the majority view. If that were the case, we would have a justified concern that the thrust of deregulation may be altered or perhaps even reversed. Greyhound's resources and programs have been founded on the premise that the vestiges of regulation will continue to subside and that the principles of deregulation will continue to be the national transportation policy. We hope that we are justified in that view.

OTHER FEDERAL POLICIES

Greyhound urges that the present deregulation policies be extended and that future policies continue to embrace the principle that a strong, viable and competitive bus industry is an essential component of the national transportation system. Conversely, policies and actions, whether they be State or Federal, which inhibit and unduly burden a strong bus industry should be repudiated. We are aware that there are efforts underway to make the rendition of intrastate bus service, and particularly airport service and other regional service, much more difficult. These efforts will take away from the ICC and arrogate to local and State authorities the right to control access to and from airports and other areas. These efforts should be carefully scrutinized so as not to throw the yoke of regulation back on the bus industry, and in particular, a growing segment of the bus industry.

CONCLUSION

We continue to endorse the proposition that the end of all Federal and State economic regulation of the bus industry is the next logical and appropriate step. Some States have advanced beyond the Federal regulatory framework and have totally eliminated all economic regulation of motor passenger carriage. (Arizona, Alaska, Florida, Indiana, Maine and Wisconsin). Total economic deregulation did not give rise to any of the purported fears, in fact, in these States, the elimination of economic control was largely a non-event. Now, after nearly three years of experience under the Bus Act, it is increasingly obvious that those remnants of regulation frustrate rather than enhance efficient transportation services.

Credible evidence demonstrates that earlier speculative fears regarding the then unknown world of deregulation have not materialized. Responsible studies by the ICC and Motor Carrier Rate Studying Commission have pronounced the Bus Act a success, and have put to rest the fear that harm would befall the small communities, older Americans and small carriers. We are hopeful that the Bus Act can be viewed as a transitory stage in the further evolution of deregulation. The Bus Act should not be viewed as a long-term regulatory scheme serving the public interest because those remnants of regulation, while no longer creating a substantive burden, are creating a ministerial and administrative burden. We urge the continuation of dialogue regarding total economic deregulation of the bus industry. We believe that such deregulation can be accomplished in an orderly fashion. We suggest that Congress consider legislation "sunsetting" economic regulation of the intercity bus industry by both the ICC and the State regulatory agencies. The emotional adjustments to the Bus Act are behind us, and it should be possible to rationally discuss the various matters "sunset" entails.

Without being all-encompassing, we see the broad framework of "sunset" including the following:

1. ICC regulation in all particulars terminating six months after enactment of "sunset" legislation.
2. Carriers desiring toi operate in interstate and foreign commerce and intrastate commerce obtain a certificate of fitness from U.S. Department of Transportation. This certificate would not be route or area specific, but would allow operations between any point in the United States.

3. State transportation regulation to be totally preempted if carriers hold a U.S. D.O.T. certificate of fitness (same preemption method as in airline deregulation).
4. Safety and insurance jurisdiction remains in U.S. D.O.T.
5. If a carrier has operated at least five round trips per week over a route for at least one year, the carrier would be required, before abandoning the operation, to give at least 60 days' notice to the Governor or Governors of the State or States involved.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. The National Association of Regulatory Utility Commissioners urges adoption of legislation providing for a "prior notice amendment" which would require bus companies to give advance notification to the communities they serve about their plans for service discontinuances before any abandonment petitions are filed. What is Greyhound's view of such an amendment?

Answer. Greyhound opposes this amendment. Although this "prior notice amendment" appears to be well-intentioned, it runs directly contrary to the stated purpose of the Bus Regulatory Reform Act of 1982: "to reduce unnecessary and burdensome government regulation."

This proposal has manifested itself in several forms over the past two years, each with varying degrees of economic regulation of bus companies. It is, in effect, a poorly disguised effort to reestablish the old regulatory procedures which prompted Congress to substantially deregulate this area through the Bus Act. It is also an attempt to recreate the structure which brought about the deleterious financial position of regular-route intercity bus companies.

While it appears innocuous, the proposal is contrary to the letter and the spirit of the Bus Act. It has within its structure the elements of a costly and time-consuming process designed to substantially reduce the ability of bus companies to eliminate losing and poorly patronized routes. Once again, parochial concerns and political determinations would dictate service levels rather than consumers and their choices.

It is important to recognize that the process of discontinuing a route, while distressing to the patrons, is even more distressing to the carrier. Unfortunately, over some routes there are simply not enough patrons to permit viable operations. When a carrier decides to discontinue service, that decision is based on compelling economic considerations.

It is foreseeable that over time, the "prior notice amendment" would become a burdensome scheme of massive studies and record keeping without any obvious public benefit or purpose. The information developed at the time of providing the notice, if on an annual basis as the National Association of Regulatory Utility Commissioners ("NARUC") now suggests or other intervals, would nevertheless be necessarily dated when the business decision to discontinue the route is made. Additional internal studies and other studies no doubt would be required to duplicate the information in the "stale", "out of date" or "incomplete list" provided to the regulator.

Despite a substantial one-time reduction in regular-route bus service after the advent of the Bus Act, only one state has this type of prior notice procedure. States have clearly felt that the existing regulatory procedures for evaluating service reduction proposals have been sufficient to ensure that the public is protected. Congress determined that state procedures interfaced with the Bus Act strike an adequate balance between the carriers' and the public interest.

The Bus Act already establishes a detailed, multi-step regulatory process for evaluating whether services discontinuance proposals are in the public interest. States have an opportunity for a period up to 120 days to analyze and consider potential impacts of route discontinuances. The Interstate Commerce Commission ("ICC") has an additional 90-day timeframe where states may participate and review evidence and present arguments anew. Collectively, this process entails a 210-day procedure which is more than adequate notice for state regulators, the public and the carriers to evaluate the needs of the public and provide for alternatives or replacement service.

In view of the substantial timeframes (seven months) under the current scheme of state and federal regulation, the proposed prior notice requirement would add little discernable benefit. On the other hand, adverse effects would be substantial.

1. Excessively burdensome record keeping procedures no doubt would arise which would not be in lieu of, but would be in addition to, the route-by-route financial data now required for an individual route discontinuance.

2. This proposal would not address any obvious public need. Under the current regulatory scheme states already have substantial notice in the event a bus company exits a route. Indeed, under the current scheme, with liberalized entry barriers, the existing 210-day timeframe is more than adequate for states and localities to explore alternatives and to encourage other bus companies, if economics justify, to enter the market under the Bus Act's liberalized entry procedures.

3. State and local governments have opportunities to obtain alternative service under the current scheme through public participation. The carriers, prior to discontinuing a route, now publicly provide financial information regarding costs and revenues for the service to be discontinued. This information is more than adequate for state and local governments to look at public service alternatives and to offer financial inducements for the continuation of the service. The annual notice requirements would not add one iota to that process.

4. The proposal is simplistic in that the carrier could meet a notice requirement by simply filing all schedules because it has them "under consideration for reduction or discontinuance" during that calendar year. No doubt, NARUC would claim foul. This simple scenario envisions the reality, that further regulations and further intrustions into the regulatory process will surely come about directly frustrating the Bus Act.

5. The "prior notice amendment" ignores the fact that bus service, in contrast to rail and air service, can be instituted literally within a very few days, with relatively little capital cost and with modest facilities. If there is an economic need, existing carriers will provide service and new carriers will enter the market. If there is no economic viability to the service, current statutory structure permits public determination to be made within the two-step state/federal, 210-day time frame.

6. The one-time restructuring undertaken by Greyhound and other intercity bus carriers is largely past and there is no need for further regulation whether by notice or otherwise. Indeed, it is respectfully submitted that the current regulatory structure should be diminished and further recede. Merely to add emphasis to this point it should be recognized that at the current time Greyhound has no pending discontinuance proceedings before the ICC and only filed three such proceedings during all of 1985. (The balance of the industry had only seven filings with the ICC for all of 1985). Therefore, this proposed amendment addresses no problem. It is a solution looking for problem.

7. Numerous states with more progressive regulatory schemes no longer regulate bus service at all and have experienced no significant problems, among them are: Indiana, Maine, Florida, Alaska, Arizona, Wisconsin, and Michigan. To roll back the clock and reestablish a regulatory structure creates problems where none now exist.

Greyhound geniunely believes that the annual filing requirement or other notice of intent prior to discontinuance would be counter-productive and would reimpose needless bureaucracy and procedural barriers where none are now needed.

Question. The House Public Works Committee is considering a provision which addresses the concern raised by some bus companies about carriers which obtain interstate authority in order to acquire the comparable intrastate operating authority. These carriers then operate extensive service between intrastate points on the routes that are particularly lucrative but provide little or no interstate service. The pending legislation would require that carriers' daily interstate operations be at least as frequent as their intrastate operations over routes covered by these combination certificates. What is Greyhound's view on such legislation?

Answer. Greyhound vigorously opposes a legislative or administrative requirement which would regulate the quantum of interstate service which carriers provide over a regular-route as a precondition to providing intrastate regular-route service. The Bus Regulatory Reform Act of 1982 ("Bus Act") as interpreted and implemented by the Interstate Commerce Commission ("ICC") is fairly and reasonably administered. The ICC has determined that it can only authorize intrastate regular-route service as defined by the underlying interstate route and that no authority can be granted unless the applicant has the interstate authority or is being granted it concurrently with the intrastate authority. A reasoned discussion is found in *Funbus Systems, Inc. Intrastate Operations—Petition For Declaratory Order MC-C-10917,* (December 28, 1984).

At this time, the ICC can issue intrastate authority permitting intrastate operations that correspond in scope to the interstate regular-route operations being, or to be conducted. Special operations are proscribed by 49 U.S.C. 10922(c)(2)(H). This statutory structure, as implemented by the ICC, ensures the carriers the necessary flexibility to conduct co-extensive interstate-intrastate operations to the full extent intended by Congress.

This proposal would limit intrastate operating rights and is based on needless parochial concerns. In many areas, the ability to provide interstate service is a necessary and an indispensable component of viable combined interstate-intrastate operations. To the extent intrastate operations are foreclosed, the ability to fully develop interstate operations may be circumscribed. In those instances which have come to our attention, the impetus for the amendment is based on the fact that the state or a local public transit body may be an actual competitor to the private carrier. In other instances, the state, local governments or others have a close relationship with the incumbent carriers who fear competition and therein arise the old badges of regulation: the protection of local incumbent carriers. In the final analysis, state regulation should not control the totality of inter and intrastate services which are provided.

This amendment could have another debilitating effect in that it imposes an arbitrary frequency requirement: interstate operations are to be operated at least as frequently as intrastate operations over the routes. In short, the regulatory process would once again determine the quantum of both inter and intrastate service levels rather than customer choices. Crosssubsidies which were so roundly criticized during the Bus Act debates inherently underly this proposal. The regulator, rather than consumer, would determine quality and service levels.

It is also significant to recognize that this amendment does not address, and could not address, safety aspects, traffic control and traffic congestion problems which may be some of the other concerns underlying this proposal. Greyhound does not object to, nor does it oppose, reasoned safety regulations, traffic control, or insurance requirements which are uniformly imposed on all carriers without discrimination—but not through this amendment. Responsible individuals do not advance this amendment as solving those problems. Our view is that isolated safety, traffic congestation and insurance problems require specific remedies, addressed to the local problem areas, rather than require the federal government, through economic regulation, to intrude into these local trouble spots.

The ICC's jurisdiction to authorize intrastate transportation is not unlimited. State regulation of solely intrastate service still resides with the states. The states retain exclusive jurisdiction for issuing intrastate authority over interstate routes. If a carrier should elect, it may seek the intrastate authority over a regular-route directly from the state rather than from the ICC.

Furthermore, the proposed retroactive application of this amendment would take away rights already granted to bus companies and no doubt lead to contentions litigation.

Therefore, Greyhound respectfully requests that any limitations on the ICC's authority to authorize intrastate operations would be a devastating retreat in the regulatory maze which the Bus Act has now shed.

Senator PACKWOOD. Thank you.

Mr. Nagle.

Mr. NAGLE. Thank you, Mr. Chairman.

My name is Paul Nagle, and I am assistant to the executive director of the United Bus Owners of America, and I presume that a large number of the new applicants referred to this morning by Chairman Taylor have joined our association, because the membership now is in excess of 2,200 carriers.

Senator PACKWOOD. What was it?

Mr. NAGLE. We began a few years ago with 500, and it has risen very strikingly. I am pleased to associate myself with everything said at this table so far this morning, Mr. Chairman, by this panel, and to associate myself also with the presentation made by Commissioner Gailliard earlier when he said that there is no correlation between rate increases and loss experiences on the crisis in the insurance industry.

In that vein, we agree and I subscribe especially to the remarks of Mr. Sherlock that the $5 million minimum level is the actual minimum that should be required, and there is no reason to request that it be delayed or postponed in any way.

I believe also that Chairman Taylor said something very appropriate when he discussed the ways in which the exit procedures have operated and how the entry procedure should operate. The NARUC witness this morning spoke about the way in which the intrastate operation of a portion of an interstate route has been misapplied by the Interstate Commerce Commission.

We think that is not true. We think that the intrastate authority is an important part of the very purposes which Senator Pressler and Senator Rockefeller would like to see accomplished. We think that it is a mistake on the part of anyone to oppose a continuation of that grant of intrastate authority as a part of interstate route, whether or not the operator of the route operates regularly and daily or constantly over the entire interstate segments.

We support the activities of NARUC in attempting to centralize registration. In our opinion, the problem facing the bus industry, the problem facing interstate carriers very especially and intercity regular route carriers is the multitude of State regulations that needs to be met, and to be given compliance if authority to operate is to continue.

A very strange situation in the State of Alabama a long time ago, or not so very long ago. Greyhound withdrew from an intrastate segment of a route in Alabama after the State contested and the ICC approved it. One of our members, a small member having only a few coaches, applied to the State of Alabama to operate that very route, and the State of Alabama said no, you come in here with a lawyer and justify the need for it after they had opposed the withdrawal or the exit of Greyhound from that very segment.

So there is a very strange pattern of contradictions here, and State regulations, and I believe that one of the most important parts of the Bus Regulatory Reform Act was the introduction of the preemption authority on the part of ICC.

In regard to safety, I think that the State of West Virginia has been a very strong contributor to highway safety in that it was one of the leaders in the Commercial Vehicle Safety Alliance. The Commercial Vehicle Safety Alliance is, I believe, the single entity which will bring about increased highway safety during the weeks and months ahead when the Motor Carrier Safety Assistance Program is implemented throughout the Nation.

These changes, I believe, will make sure that the bus industry is not an accident looking for a place to happen. Finally, Mr. Chairman, I think that the ultimate chairman to whom you referred this morning is appropriate. We should look at the ultimate cause of exit. The ultimate cause of exit of regular route carriers is the lack of ridership, and we must find the answer to lack of ridership. Certainly we cannot repeal the interstate system. We can't repeal the automobile. But until we find a compromise, a balance between those countervailing forces, we will continue to face the problem of finding someone to come in and take over in the franchise pattern to which Mr. Celmins referred.

Thank you very much for hearing my testimony this morning.

[The statement follows:]

Statement of United Bus Owners of America

Mr. Chairman, my name is Paul Nagle. I am assistant to the executive director of the United Bus Owners of America (UBOA, a trade association enrolling more than 2,200 bus companies, ranging from the largest, Greybound Lines, to the smallest, the operators of single-vehicle fleets.

Mr. Chairman, UBOA has asked to appear before you, today, to express our views on the manner and degree to which the Bus Regulatory Reform Act of 1982 (The Act) (Public Law 97-261) has been implemented by the cognizant agencies, the United States Department of Transportation and the Interstate Commerce Commission.

After almost three years, UBOA continues to hold the belief that the Bus Act was and is a most commendable piece of legislation. We continue in the position that any problems have been with implementation, rather than the content, of the law.

Allow me, Mr. Chairman, to take Section 18 out of sequence. Prospectively, the biggest event is the November 19, 1985 increase in minimum liability from $2.5 million to $5 million for motor carriers of passengers. Undenially, the biggest problem facing motor carriers of passengers is the skyrocketing cost of liability insurance. But that problem is not related to the Bus Act, per se. Were the increase not to be mandated, insurance difficulties would not thereby be lowered. Accordingly, UBOA does not consider the insurance question to figure in oversight procedures.

Sequentially, in The Act, we wish to comment first on Section 3, where in "Congressional Finding," it is observed "that State regulation of the motor bus industry has, in certain circumstances, unreasonably burdened interstate commerce."

UBOA has members who argue, vehemently, that it is a violation of the Commerce Clause of the Constitution for any State to have its own commerce laws. In our replies to such outcries, UBOA has contrasted the Commerce Clause with the Articles of Confederation, one of the most serious shortcomings of which was failure to regulate interstate commerce, with the result that a terrible web of customs barriers confronted any shipment moving across State boundaries.

We have noted the major steps achieved in the Act where (Section 16) ICC is authorized to override a State which declines to authorize intrastate fare increases, or to approve exit from insupportable intrastate routes.

UBOA is strongly supportive of State uniformity efforts by the National Association of Regulatory Utility Commissioners (NARUC), an organization which had serious misgivings about the pre-emption of State laws contemplated in The Act and in later legislation. As a result of work that has been going forward under the determined auspices of NARUC, the nation may hope, in a little more than one year to see a centralized, computerized registration program which will tend to neutralize what motor carriers of passengers now perceive to be a forbidding mass of conflicting State regulations.

One of the major changes brought about by The Act is the intrastate provision of its Entry Policy, Section 6. We are particularly supportive of Sub-section (b) (2) (A) which authorizes the Interstate Commerce Commission (ICC) to authorize "regular-route transportation, entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has authority . . . to provide interstate transportation of passengers."

UBOA has seen carriers attempt, under Section 6, to extend their routes on an intrastate basis; in ICC parlance, "to tack" the new intrastate application to a pre-existing interstate operation. We support the action of ICC in the denial of such applications.

On the other hand, UBOA has been distressed over efforts (notably in New York City) to prevent certificated carriers from performing purely intrastate service in accordance with Section 6. An example: One of our members, Erin Tours, a Brooklyn-based carrier has asserted to the regional administrator of the Urban Mass Transportation Administration (UMTA), that it has suffered harassment at best, sabotage at worst, at the hands of a carrier under contract to the City; that Federal funds are being used by that contracting carrier in violation of UMTA criteria; and that New York (the City) does nothing because it wants to dry up Erin's Brooklyn/Manhattan intrastate route as a part of its New York/New Jersey/New York interstate operation.

Furthermore, Erin alleges that the City has thwarted the carrier's efforts to comply with Subsection (b) (2) (E) of Section 6 wherein it is directed that any carrier providing intrastate service as part of an interstate route, "shall take all action necessary to establish under the laws of such State, rates, rules, and practices applicable to such transportation." The City has been unresponsive to Erin's applications for operating authority.

Of course, The Act's major impact upon Entry Policy is the fit, willing and able standard for entitlement to be awarded authority to transport passengers in charter of special transportation. Establishment of more detailed fitness criteria has come in later legislation, notably the Tandem Truck Safety Act (TTSA) of 1984. UBOA is pleased to note that rising from the seed planted in The Act, the Bureau of Motor Carrier Safety (BMCS) at the Department of Transportation (DOT), has made it clear that it will require applicants for ICC authority, to reveal exactly what has been done—what will be done—to achieve and maintain compliance with safety fitness.

In that same vein, and in keeping with the theme furthered by The Act, UBOA viewed approvingly, the naming of a Motor Vehicle Administrator at DOT. UBOA supports the decision to create such a position. Furthermore, we applaud the selection of Richard P. Landis to carry out the mission of that office. Having spoken, here, of State uniformity, it is thoroughly appropriate to note that Mr. Landis, formerly a senior highway patrol commander on Arizona's Department of Public Safety made outstanding contributions to the work of another public interest group, the Commercial Vehicle Safety Alliance (CVSA), of which explicit recognition was given by this body as TSA was shaped into law. UBOA believes that next to that law, itself, CVSA will be the strongest single determinant of the effectiveness of the finest highway safety act in the history of our country.

Having said that, having declared support for the work done at DOT to recognize the motor carrier industry, UBOA offers the hope that congress will create, by law, a Motor Carrier Administration at DOT. We have every respect for the St. Lawrence Seaway, but we think it is unusual that there should be a Seaway Administration but no Motor Carrier Administration. UBOA believes there is a need for a Motor Carrier Administration, and we look with special approbation on the emerging prospect that legislation to establish the new body will call for orderly transfer of essential activities of the Interstate Commerce Commission to DOT with ICC, thereafter, being allowed to face sunset.

UBOA has supported ICC Chairman Reese H. Taylor, Jr., and his associate commissioners, more thoroughly than has been the case in any predecessor Commission. At the same time, UBOA is troubled. We believe ICC has not, forthrightly and innovatively, managed the "fitness only" criterion for the award of operating authority.

Hardly less serious is ICC's administration of a salient feature of The Act, the Mexican moratorium. At the time of enactment, it was not definite that the moratorium route was the one to follow. As it turns out, that route was correct. For passenger operations, UBOA has had two reservations.

We were dismayed when ICC declined to assert control over acquisition of a Stateside carrier by a Mexican National.

Currently pending at ICC is rulemaking to establish a commercial zone covering four entire counties along the Mexican Border in Texas. Although advocates of the rulemaking did not comtemplate that passenger carriers would be included, ICC invited comment on extending commercial zone operations to bus owners. There is no way of knowing the extent to which ICC will accept UBOA's contention that it is illegal to include passenger carriers in the greatly enlarged commercial zone.

Mr. Chairman, whatever action may occur by reason of legislation that has been enacted subsequent to The Act, or what is currently pending in legislation, it is requested that ICC be directed to enforce more relevant fitness criteria; that this be done especially for first-time applicants; but that ICC invoke the provisions of Section 23, and that ICC undertake, more effectively to sweep illegal operators from the highways. The recent rash of church bus accidents is tragic testimony to the need, among other things, to police common carriage masquerading as private transportation.

UBOA is certainly appreciative of the opportunity to appear before you, today, to express our enthusiasms and our disappointments at the ways in which The Bus Regulatory Reform Act of 1982 has been enforced. We are persuaded that The Act fully deserves to be recognized as a noteworthy milestone along the long route of interstate commerce, a trip which began almost two hundred years ago when the Commerce Clause was approved on August 16, 1787. Again, Mr. Chairman, thank you for being allowed to present this statement.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your view what has been the most positive impact of the Bus Regulatory Reform Act of 1982?

Answer. The most important precedent of the Act is its limitations upon the freedom of States to disregard the pre-eminent authority of the Commerce Clause of the United States Constitution. Specifically, the following provisions are cited as being precedent-setting:

(1) Section 6(b)(2)(B): "The Commisson shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers . . ."

(2) Section 6(b)(2)(C): No State or political subdivision thereof . . . shall enact or enforce any law . . . relating to the pickup and delivery of express packages, newspapers or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement . . . by a motor common carrier of passengers providing regular route transportation subject to the jurisdiction of the Commission . . ."

(3) Section 7: Restriction Removal; all.

(4) Section 16: Exit Policy; all.

(5) Section 17: Discriminatory State Regulation of Rates and Practices; all.

Question. Have the experiences of your members paralleled those of the American Bus Association members which were described in that organization's testimony?

Answer. To the extent that the testimony of the American Bus Association described insurance impacts on independent and family-owned enterprises, member experiences in our two organizations have been closely similar if not identical.

Question. Do the premium increases being experienced by your members have any relationship to the safety records or accident experience of your members?

Answer. There is no relationship between member loss patterns and increases in member costs of coverage. UBOA enrolls in its insurance program, approximately 1700 carriers. Our overall loss ratio has remained below 50 percent while, in testimony before your counterpart subcommittee in the House of Representatives, the lead witness for the insurance industry testified that "Commercial Auto" coverage has had loss ratios approaching 150 percent since 1980.

However, that may be, the comparative percentages of loss ratio are largely irrelevant. What is important is that increases in premiums are wildly disproportionate to losses paid out by insurors.

Senator PACKWOOD. Thank you very much.

Mr. Molofsky.

Mr. MOLOFSKY. Mr. Chairman, my name is Robert Molofsky. I serve as legislative director for the Amalgamated Transit Union. It is a pleasure to be here today on behalf of our international president Jim LaSala to present our views on——

Senator PACKWOOD. I do not know if you heard earlier. The entire statement will be in the record, but we have to keep oral presentations to 5 minutes.

Mr. MOLOFSKY. I would very much like to summarize my remarks.

Appearing with me today, Mr. Chairman, are Dave Butler, secretary-treasurer of our ATU Greyhound Bargaining Council, and Frank DeWolf, chairman of our Trailways Bargaining Council to offer their views on the tragic impact deregulation has had on thousands of long-term industry employees whose jobs have been lost as a result of the service reductions and cutbacks made easier by the act's provisions.

The ATU represents 130,000 employees in the U.S. urban transit industry. Today 13,000 of these workers are employed directly in the over the road bus industry, notably with Greyhound and Trailways. As discussed below, I would like to stress the following major points in our testimony.

First, as the witnesses today have discussed, and as Senator Pressler and Senator Rockefeller have questioned, the act has not produced expanded service or increased competition on intercity routes.

Second, the major class 1 carriers have abandoned substantial service in the rural areas affecting thousands of small-town residents, the elderly, the poor, and their families. Whatever increases there have been in regular route intercity service, we submit, Mr. Chairman, have been predominantly overlapping existing routes, so that the net effect has been new carriers or increased route service on only the most profitable of routes.

Third, service expansion has occurred almost exclusively in charter, resort, and other specialized irregular routes. Most tragically, from our point of view, Mr. Chairman, employment losses in the over-the-road bus industry have been severe, with over 6,000 ATU members' jobs lost since 1982. We submit that the act should be amended to ensure continued job opportunities within the industry for these workers, many of whom have seen their jobs lost after 5, 10, and even 15 years' service within the industry.

Our proposal, as set forth in detail in our testimony, would require that the act be amended to provide that employees whose jobs have been lost as a result of deregulation be provided job preference so that those carriers now hiring in the industry, whether they are class 1 carriers or below, be required to draw their new employees from the pool of these employees laid off as a result of the act's deregulation activities.

Finally, we suggest that the Congress continue to reexamine the present industry structure and the act's true effect on service, and review, as other witnesses have suggested, recent evidence on insurance rate increases and safety on the newer, more marginal carriers. Overall, Mr. Chairman, from labor's standpoint, the implementation of this act has been devastating. When we last appeared before you in October 1984, 18,000 ATU members were employed in the industry. Today that number is barely 13,000. In just 12 months, an unprecedented 4,500 jobs have been lost as a result of deregulation.

On Greyhound alone, employment levels have dropped from some 12,000 active workers in June 1984 to an expected 8,300 in November 1985, a 30-percent loss. Additional reductions have taken place among our Trailways members and our other intercity carriers. Despite new entrants mostly in the charter field, total industry employment is down since 1982.

For these workers, there is no expectation of recall or job retraining to other industry jobs. These workers are the victims of deregulation. They do not suffer alone, Mr. Chairman. But the act does not accomplish its major purpose of expanded competition and increased service. In fact, since 1982, well over 82 percent of all applications for new service and routes has been in the specialized and charter markets.

What we have also experienced, Mr. Chairman, under deregulation is a transit industry where the decisions of the dominant carrier are guided more by an interest in servicing their bottom line than the general public. Greyhound, for example, has publicly stated that its operating philosophy is premised on achieving a 15 percent profit on its investment.

Failure to achieve this goal, it has said, could force it out of business. In fact, the chairman of our bargaining council, was unable to be here today to discuss these issues because discussions are taking place on midterm changes to prevent additional service cutbacks and job losses.

Most recently we have witnessed major efforts by Greyhound to sell off its intercity terminals and attempt to franchise up to 10 percent of its service. The long-term results of these approaches may well be the loss of a national transportation network, leaving a fragmented industry serving only the most profitable routes.

Our legislative proposal to protect the employees whose jobs have been lost include the following major points. The act as it now stands says that if you are terminated as a result of deregulation, your old carrier must rehire you when they hire again; that new carriers for whom you never worked must consider you for hire. However, the 6,000 employees whose jobs are lost because they have union representation have not been terminated. They are on furlough. Under the ICC's interpretation of the act, they are not eligible for any of the existing act's employment protection provisions. They are not subject to rehire by outside carriers or given consideration because they are on furlough, and not terminated.

We would propose, as I said earlier, that the act be amended so that any worker whose job has been lost as a result of deregulation, whether he is now on furlough or terminated, after a period of 6 months be eligible for the act's employee protections and that carriers in the industry, outside carriers or an employees former carrier whenever hiring be required to give job priority and hiring preference to protected employees before they are free to hire off the streets.

Thank you, Mr. Chairman.

[The statement follows:]

Statement of James La Sala, President, Amalgamated Transit Union, AFL-CIO

Mr. Chairman and members of the Committee: My name is Robert Molofsky, Legislative Director of the Amalgamated Transit Union, AFL-CIO, CLC. It is my pleasure to appear before you today on behalf of our International President James La Sala to present our views at this 3rd Annual Oversight Hearing of your Committee on Bus Regulatory Reform. Also appearing with me are officers of our ATU Greyhound and Trailways bargaining Councils to offer their personal perspective on the tragic impact deregulation has had on thousands of long-term industry employees whose jobs have been lost as a result of the service reductions and cutbacks made easier by the Act's provisions.

The ATU represents 130,000 employees in the U.S. urban mass transportation industry composed of drivers, mechanics, clerks, baggage handlers, ticket agents and maintenance personnel. Today 13,000 of these workers are employed directly in the over-the-road bus industry, notably with the Greyhound and Trailways Corporations where we have nationwide representation rights and national agreements. Altogether, the ATU maintains 48 locals representing our members in this industry throughout the United States.

Our comments will focus primarily on the impact of the Act's provisions on the industry's employees. Thousands of long time industry employees have suffered job losses and other employment dislocations as a result of the Bus Regulatory Reform Act.

As discussed below we will stress the following major points.

1. The Act has *not* produced expanded service or increased competition on intercity routes.
2. The major Class 1 carriers have abandoned substantial service in the rural areas affecting thousands of small town residents, the elderly, the poor and their families.

3. Service expansion has occurred almost exclusively on charter, resort and other specialized irregular routes.

4. Employment losses in the industry have been severe with over 6,000 ATU member's jobs lost since 1982.

5. The Act should be amended to ensure continued job opportunities within the industry for workers affected by deregulation.

6. Congress should reexamine the present industry structure, and the Act's true effect on service, and review recent evidence on insurance rate increases, and safety on the newer more marginal carriers.

From labor's standpoint, the implementation of the Act has been devastating. The overall effect has been to destroy long-term career employment, especially among those working for the Class 1 carriers.

Mr. Chairman, when we last appeared before you in October 1984, some 18,000 ATU members were employed in the intercity bus industry. Today that number is barely 13,000. In just 12 months an unprecedented 4,000–4,500 jobs have been lost as a result of deregulation. On Greyhound alone post strike employment levels have dropped from 12,161 active workers in June 1984 to an expected 8,300 as of November 1, 1985—a 30% loss. Additional reductions are taking place among our Trailways members and on other intercity carriers. Despite new entrants—mostly in the charter field—total industry employment is down since 1982. For these workers, there is now no expectation of recall or retraining to other industry jobs. These workers, many with 5, 10 and even 15 years of service are the victims of deregulation.

Service cuts and route cancellations made easier by the Act's provisions have led to these large-scale employment losses on the Class 1 carriers. For those workers still employed, the Act's ease of entry provisions have fostered the emergence of many small non-union, low wage rate operators, especially in the charter field and led to unfair wage competition. These conditions have severely depressed employee wages and benefits throughout the industry. Perhaps most damaging of all has been the lack of any meaningful protection in the legislation against long-term job losses due to deregulation. We are compelled to bring these matters to the Committee's attention because they stand in stark contrast to the Act's stated goal of "encouraging fair wages and working conditions in the transportation industry", as it otherwise sought to provide improved service to the public.

Unfortunately, these workers do not suffer alone. Contrary to Congress' expectations, the Act has not accomplished its major purpose of expanded competition and increased service. The relaxed entry and exit provision have produced an expansion of service among only the charter and other specialized transit operations. In fact since 1982, over 82% of all applications for new service and routes has been in these markets and not in the intercity routes. At the same time hundreds of rural communities have lost service isolating thousands of our country's rural poor and the elderly, from their neighbors, families and nearby cities. In addition inter and intra state rate increases have placed greater financial burdens on those who most need frequent and inexpensive transit service.

Proponents of deregulation originally argued that an unrestricted marketplace, operating without governmental interference, would enable bus companies to prosper financially and benefit consumers as well. It was anticipated that smaller bus companies would fill the vacuum left when the Class 1 carriers, notably Greyhound and Trailways, abandoned their less profitable routes. This too has not occurred. In fact, new entry and service expansion have largely been confined to the most heavily traveled intercity and resort routes.

What we have also experienced is a transit industry where the decisions of the dominate carrier are guided more by an interest in servicing their bottom line than the general public. Greyhound for example has publicly stated that its operating philosophy is premised on achieving a 15% profit on its investment. Failure to achieve this goal it has said could force it out of business. In fact, the chairman of our Greyhound bargaining council was unable to be here today to discuss these issues because negotiations are taking place on mid-term contract changes to prevent additinal service cutbacks and job losses.

Most recently, we have witnessed major efforts by Greyhound to sell off its inner city terminals and attempt to franchise up to 10% of its service. The long-term results of these approaches may well be the loss of a national transportation network leaving a fragmented industry servicing only the most profitable routes. Trailways too, has been seriously hampered by an overly-burdensome debt, enlarged by increased competition from the small cut-rate carriers and charter operators.

We seriously doubt that the Congress had these results in mind in enacting the BRRA. We urge this Committee to again focus its research on a full exploration of the new and abandoned service markets since 1982, as well as the recent history of insurance rate increases, and safety record among the newer more marginal carriers.

Mr. Chairman, it is not our intention to repeat our prior testimony stating that in our view the major regulatory changes proposed by the 1982 Act were unwise, ill-timed and ill-designed. What we wish to convey is the different point that, as deregulation has played out, the larger carriers have used the revised procedures to strengthen their financial position with route cancellations and rate increases while falsely touting expanded competition in the industry as a basis for forced reductions in wages and benefits. In both instances, the Act's adverse impact falls upon the employees who are our members and the public whom we all serve.

Our study further reveals that in the three years since the Act's implementation, employment losses have been accelerated at a rate far greater than that experienced during the recession of 1981 and 1982, leading us to conclude that nearly all of the current furloughed work force lost work as a result of deregulation.

We don't believe that it was the Congress' original intent to place the entire burden of "revitalizing" needed intercity transit service on the backs of the employees who provide that service. Yet that has been the impact.

The existing employee protection provisions set forth in Section 27 of the Act have provided no relief at all to the many thousands of workers who have seen their jobs vanish and their careers disappear. Almost all of the unionized workers who lose their jobs as a result of deregulation are placed on furlough, and thus rendered ineligible for any preferential rehiring consideration by statutory exemption.

Although the Act established a priority of reemployment right for "eligible" employees, these provisions can never be activated if the furloughed employee still enjoys a right of recall under the applicable collective bargaining contract.

In addition, the legislation sought to establish a right for terminated employees to be "considered" for employment by other carriers in the industry seeking new hires. This second right however, does not guarantee that the employees be hired, but rather, that they be given consideration for employment along with other applicants. Both rights apply only to openings in the employee's occupational specialty.

The second level of protection, the right of consideration is also, in fact, no protection at all. For again, employees on furlough with recall rights are denied such consideration rights. For others who might qualify, existing registration procedures place the entire burden on the employee to notify the ICC of his job loss and specify the specific route reduction or cancellation that led to his effective termination. There is no similar requirement placed on carriers to notify the ICC of the job termination or service discontinuance.

Moreover, the obligation is placed entirely upon the protected employee to notify his former employer that he wishes to be reemployed at anytime the company hires new workers and also to advise other prospective employers of his "protected status" and desire to be considered for any vacancies.

In sum, under the Act, employees on furlough with recall rights under exising labor contracts are ineligible for protected status, and any of the preference rights. Yet most of the employment cutbacks during the last two years were by unionized, Class 1 carriers, i.e., Greyhound and Trailways, whose workers were automatically placed on furlough under existing labor contracts. The net result is that these employes forming the bulk of the unemployed pool for whom the Act's protections were designed, receive no assistance at all; their former carriers are not hiring, and there is no obligation placed on outside carriers to employ these individuals.

This anomalous situation was confirmed by a November 7, 1983 decision of the ICC denying eligibility status to six employees because of their furloughed position with their home carriers. To date they remain the only six employees who have sought to take advantage of the Act's limited protections.

In our view, Mr. Chairman, Congress' failure to incorporate meaningful protections into the regulatory legislation represents an unjustifiable departure from long-standing federal policy which for over 50 years has recognized the need to couple meaningful employee protections with regulatory reform. Since the 1930s, railroad employees covered by numerous reform measures affecting mergers, sales, leases, and service reductions have been afforded these fair job and benefit protections. The prototype protections set forth in Section 5(2) of the Interstate Commerce Act of 1940 have been applied, by agreement, decision or legislation to each successive generation of rail regulatory reform, including the most recent Rail Reorganization Acts of 1970, 1973, 1976, 1980 and 1983. The Section 5(2)(f) protections later became the model for protections afforded mass transit employees under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. It is significant that as that Act was revised and extended over the years in 1974, 1978 and most recently by the

Surface Transportation Assistance Act of 1982, these protections have never been removed or altered. Similarly, the Airline Deregulation Act of 1978 was originally passed with protections for industry wide job rights, employment preferences, and compensation guarantees.

We believe that full employee protections comparable to those included in other transportation assistance and reorganization legislation should be incorporated into the Bus Regulatory Reform Act. Failure to so provide will almost certainly leave thousands of additional long-term career employees unemployed and unable to find work in their chosen occupation, thereby placing an unfair burden on them and their families.

Attached hereto is a detailed discussion of our specific legislative proposal.

We would be pleased to work with the Committee and its staff to develop an appropriate employee protective provision which would be inserted in the Act as a substitute for the existing standards.

Thank you Mr. Chairman. We would be happy at this time to respond to any questions or comments you or other Committee members may have.

Proposed Employee Protection Amendments to the BRRA of 1982

As presently designed, the employee protection provisions of the Act offer a priority of reemployment right for eligible employees terminated as a result of a Class 1 carrier's service discontinuance or schedule reduction as defined in Section 27(c). The reemployment preference requires an employee's former carrier to rehire the person into his or her occupational speciality at such time as the carrier is hiring additional employees (Section 27(a)). A carrier recalling employees from furlough is not considered to be hiring additional employees. The Act further provides that an employee must be officially terminated from service as a result of an approved discontinuance or service reduction to be eligible for protection. Furloughed employees are exempt from the Act's protection. Furloughed employees are exempt from the Act's protections. These same restrictions apply to the second level of protection requiring other Class 1 carriers to extend employment "consideration" to eligible protected employees of another such carrier at the time they are hiring new employees. This second level of protection does not require the outside employer to employ the terminated worker.

As set forth in our testimony, almost all of the 5,000–6,000 employees whose jobs have been lost because of these service changes were employed by Class 1 carriers, and covered by collective bargaining agreements under which these workers were put on furlough and thereby rendered ineligible for the Act's limited protections.

The original purpose of the furlough exemption was to avoid any potential conflict with the parties' collective bargaining agreements and the Act's protections, and to avoid placement of individuals with a new carrier only to have the employee exercise a right of recall to his former employer. In practice, however, the layoffs and furloughs caused by the Act's provisions have been long-term. Almost all of the employees placed on furlough have not been recalled. Those few that have been recalled were employed as a result of either a temporary cyclical or seasonal increase in employment levels. In sum, the furloughed workers whose jobs have been lost have been denied both the reemployment priority and any right of consideration for hire with other carriers.

We, therefore, propose amending Section 27(a)(1) and (d)(2), to render eligible for the Act's protection, employees on furlough in excess of 6 months, who otherwise meet the Act's requirements. A 6 month waiting period would eliminate the possibility of a recall as a result of seasonal adjustments. An affected employee would in practice be given the option of remaining on the furlough list or accepting a new position and thereby forfeiting his or her recall rights.

Secondly, inasmuch as the overwhelming majority of employees whose jobs have been lost since the Acts passage were employed by the dominant Class 1 carriers, who are not hiring, the existing priority of reemployment right offers no measurable protection for affected employees. Therefore, in order to include meaningful protections for long-term industry workers, we propose that the "second level" of protection, the right of consideration as set forth in Section 27(b) be amended to provide a priority of employment protection guaranteeing qualified and eligible employees the right of hire with outside carriers when filling positions in the employee's occupational specialty.

In addition, while there is some expansion by the Class 1 carriers as a result of turnover and attrition, the major hiring within the industry is by carriers who fall under the Class 1 threshold. Therefore, we further propose eliminating the

$3,000,000 Class 1 threshold for employers and require the application of the priority of hire rights to all carriers operating under ICC approved authority.

These amendments would provide qualified employees with opportunity to remain in their chosen profession and provide the public with continued skilled service. Eligible workers would be selected from the list of employee names, job skills, and geographic locations, maintained by the ICC and forwarded to the hiring carriers as well as other interested parties upon request.

These amendments are consistent with the priority of employment and reemployment protections provided to rail and other transit industry workers whose jobs have been lost as a result of deregulation, mergers, consolidations or other governmental approved actions.

Finally, we propose for the Committee's consideration amending the employee protection provisions to enable all qualified employees who meet the Act's service requirements and whose employment has been terminated by a motor carrier of passengers other than for cause, to be eligible for the priority employment rights described above, without regard to whether the termination was related to the Act's regulatory scheme. This measure of protection would be available to employees whose jobs have been lost generally for business or other cyclical reasons. Again, our goal is to enable the public to benefit from the skills and qualifications of long-term employees operating within the industry.

We are prepared to meet at the Committee's convenience to discuss these proposals further and to present to the Committee a detailed legislative draft containing our amendments. We have discussed this proposal with the UTU and the AFL-CIO and they are fully supportive of the recommendations contained herein.

[The following information was subsequently received for the record:]

AMALGAMATED TRANSIT UNION,
Washington, DC, November 25, 1985.

Senator BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: This is in response to questions raised by the Senate Commerce Committee regarding testimony by the Amalgamated Transit Union before the Surface Transportation Subcommittee on October 21, 1985.

Specifically, the questions you raise concern reconciling the establishment of meaningful employee protections with the bus industry's goals of securing greater flexibility in route and rate structures, as well as the Congress' overall purpose of increasing competition in the over-the-road bus industry.

As outlined in our testimony, transit labor believes that the impact of bus deregulation has been unduly harsh on the long-term employees who have for decades provided service to the riding public. By the end of 1985, over 9,000 employees of Greyhound and Trailways will have been terminated and/or placed on layoff as a result of service cutbacks and other adjustments fostered by the Bus Regulatory Reform Act of 1982. In our testimony, we argued forcefully for the need to implement Congress' original intent to provide workable employee protections to insure that those workers in the industry whose jobs were abolished, or whose positions were eliminated as a result of the Act, would be afforded opportunities to continue employment within the industry.

To that end, we proposed the establishment of a employee protection system for employees either terminated or placed on furlough in excess of six months, that would guarantee them priority of employment with those carriers hiring in the industry. These protections would apply not only to the employees' former carrier, but to other carriers whose entry into the industry was made possible by the Act's liberalized requirements. We do not believe that the institution of the employee protection proposal, set forth in detail in our testimony, would hinder in any way the operating flexibility of the existing companies or undermine the competitive goals of the 1982 Act. The clear purpose of our proposal is to provide jobs for employees. We are not seeking to retain those workers under existing terms and conditions of employment with outside companies. Again, we believe it is in the nation's interest to retain long-term, skilled professional employees who have exhibited a substantial commitment to the industry.

We are prepared to work closely with this Committee to refine these proposals so that they provide the necessary employee protections and at the same time maintain the goals of the 1982 Act.

Sincerely,

ROBERT A. MOLOFSKY,
Legislative Director.

Senator **PACKWOOD**. A quick question. You say Greyhound is trying to achieve—what was the figure you used?

Mr. **MOLOFSKY**. Fifteen percent return on its investments.

Senator **PACKWOOD**. Is that excessive?

Mr. **MOLOFSKY**. We believe so, in light of what it has done in terms of service to the public, and in light of its impact on our employees. That 15 percent has been at the expense of our employees' hard-fought wages and benefits.

We have had severe cutbacks in our terms and conditions of employment, in excess of 20 percent, and continuing on both Greyhound and Trailways.

Senator **PACKWOOD**. How much should any company hope to realize on its investment?

Mr. **MOLOFSKY**. Mr. Chairman, I can't give you a specific figure as to what an expected return on investment is. We believe the purpose of Congress in designing a national network and the legislation for implementing that, is to give preeminence to service to the public, and how you design and regulate an industry to guarantee that it will provide that kind of service.

We have not witnessed in the years since deregulation an expansion in the kind of service that we believe Congress envisioned. There has not been increased competition on the intercity routes. You have seen the companies grab up whatever the most profitable service is, mostly in the charter business, the gambling and other resort business.

The public has not been well served by this. We believe companies in business surely deserve to profit so that their employees and the companies themselves can benefit by continued operation. But when Congress' legislation restructures the marketplace, and operates in such a way that the impact of those changes is most deeply felt on the general public and on employees who have dedicated their lives to servicing the public and industry, we believe that is unfair.

Senator **PACKWOOD**. Mr. Sherlock, on insurance, does Congress need to do anything? You are unhappy with the ICC's enforcement. Does Congress need to do anything?

Mr. **SHERLOCK**. Well, we suggest a number of courses of action. To place a cap on liability. The airlines have a convention which caps their liability on international operation. Certainly you could require the insurance companies to give at least 90 days' notice so that a carrier is not thrown out into the market with a last second notice.

We believe that should follow what you did in the safety bill, which is to make sure that all buses which operate in interstate activity have to have the same level of insurance and have to carry proof of that insurance on the vehicle. Beyond that, anything that you can do to help us rationalize the situation would be appreciated. Enforcement clearly is a major thing that you can do without passing legislation, simply by making the two regulatory bodies very accountable to you on a standard reporting basis, and in a very detailed way so that you know who is doing what about making sure that underinsured and uninsured carriers are not operating.

Senator **Packwood**. You heard Chairman Taylor talk today about the intrastate regulation, and on occasion it keeping rates at about 40 percent lower than interstate, although you are using the same equipment, and I would assume at close to the same costs. Are there some justifications for those very low intrastate rates?

Mr. **Sherlock**. Not in our view. One of the major thrusts of the deregulation bill was to take care of a problem which had been bothering the industry for some time, these artificially low intrastate rates. They were not based on economics, but politics, as much as anything. State authorities did not wish to tell people that they had approved rates higher than they would like to pay, and that is why Congress had to take action, and we think it was very good action.

On the other side of the scale, we think the second major improvement that really came out of the dereg bill was the way discontinuance of service was taken care of, so that we would not have to serve losing routes forever.

Senator **Packwood**. In your judgment, should we move on down the road toward further or complete deregulation again exempting safety and insurance?

Mr. **Sherlock**. We think there are some improvements to be made yet in deregulation. One of them certainly is the idea of an advocate body within the Department of Transportation, so that our voice will not wholly be lost or ignored down there.

Senator **Packwood**. That is a common request if we move down the road. Is there any regulation you would keep?

Mr. **Sherlock**. We would like to keep the fitness and other standards that we have been talking about. We would suggest that the entry standards be moved over for administrative purposes to the Department of Transportation.

Senator **Packwood**. But with any requirement for entry other than assurance of safety?

Mr. **Sherlock**. Continuing the basic thrust of the standards that we have suggested before.

Senator **Packwood**. Which is?

Mr. **Sherlock**. That they take into account whether the filing should be allowed in view of the public interest and the larger issue being that of the mass transit district that you focused on earlier. It is not necessarily true that the mass transit district should be allowed to use the bus bill as a loophole to get into nationwide tour and charter authority, and we believe that should be clearly prohibited.

Senator **Packwood**. That is not so much an issue of regulation or deregulation as whether we are not going to let government entities compete with private entities, whether it is the bus industry or any other industry, though.

Mr. **Sherlock**. It is certainly a major policy consideration.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Thank you, Mr. Chairman.

How recent a development is the insurance crisis? Historically, you know, we didn't hear much about this until just very recently. Do you take any action against ABA members which do not meet the minimum insurance requirements?

Mr. **Sherlock**. Well, the onset of the insurance dilemma came suddenly, within this last year, as the entire insurance industry turned around. It has had a major impact. Just by way of illustration, on my board, I have a carrier which had paid $120,000 a year for its coverage, and on renewal the only place it could go came up with a $775,000 premium.

That carrier and others do not make those kind of profits, so their only option obviously is to cut their service and sell buses. That is going to happen industrywide. We have addressed this problem at our board of directors meeting, at our annual meeting just over a week ago, and voted to require adequate compliance with insurance as a continuing aspect of membership in the association. We have not yet set forth the definitive administrative mechanism for implementing that measure, but we do not wish to represent carriers who are running underinsured or uninsured.

The association does want to represent carriers which are reliable, safe, and operate with integrity.

Senator **Pressler**. Could you be more specific, or any of you, about the types of legislative initiatives you feel would bring insurance premiums more in line with the safety records and performance of carriers?

Mr. **Sherlock**. I am not sure just how you do that in specifics, but it is something I think this committee staff should take a very long look at. If our liability were capped in some way, that would certainly encourage lower premiums.

Senator **Pressler** [presiding]. What would you suggest would be the appropriate limits for bus carrier bodily injury liability and punitive damages?

Mr. **Sherlock**. Well, we have supported the $5 million level for coverage and routinely before we supported that provision our carriers carried at least $10 million, generally speaking. I think it depends on the exposure of the carrier and the size of the carrier, but certainly not less than five. That has to be viewed as an absolute minimum.

Mr. **Knappen**. While the States are starting to enact liability limitations, and I think we would want to look at some of those. The Supreme Court has just approved the California $250,000 cap on medical, noneconomic damage. Montana has recently enacted a limitation on punitive damage which is no more than 1 percent of a company's assets or $25,000, whichever is greater, is another approach.

Senator **Pressler**. Yes, anything further you can provide, any great ideas in this area. I know the product liability insurance, liability is something we are very interested in across the board. We do have the problem, both problem and a blessing, of the jury trial being in our Constitution.

It was put there at a time when we were very concerned about the judgment of peers, but this has led us into a substantial problem in terms of the size of some of these awards, and let me say that if there are punitive damages needed, I am certainly for them, but I imagine that any corporation is thought to have a deep pocket, and some of these juries have gotten a little carried away, and it is awfully hard in our society not to respond to that.

But in any event, moving on to another area, Mr. Knappen, could you discuss, and perhaps you have already, the issues behind use of section 18 UMTA funds to subsidize rural bus routes and if these funds had been available, how much of the abandonment we have seen seen since deregulation would have occurred.

How much do you think it would have cost to save those routes?

Mr. **Knappen**. Senator, I think that section 18 has been grossly underutilized, and honestly I think the problem is at the State level. There is a mind block against using funding like this to subsidize for profit operators, and I have seen it repeatedly. It came up in West Virginia in a Trailways case there. A recent case with a Trailways affiliate in the State of Iowa, I was familiar with everybody involved, so I personally asked the administrator of UMTA to write to the State officials asking for section 18 money for a route that was to be abandoned, and he did, and followed up with a phone call, and that still has not produced any section 18 subsidy.

In your State of South Dakota, Senator, just to address the subject that has been addressed several times this morning with regard to the Rapid City west route, the service on that route had an operating loss last year of $150,000. If a subsidy were available——

Senator **Pressler**. Could you provide us the numbers as to how you arrived at that?

Mr. **Knappen**. Yes, sir, I have got them here, and I will be happy to supply them to you right after the hearing.

Senator **Pressler**. Why don't you do it right now?

Mr. **Knappen**. Do you want me to just run down the revenue and expense numbers for that route?

Senator **Pressler**. Yes.

Mr. **Knappen**. All right. Operating revenue, passenger revenue, $26,720.

Senator **Pressler**. That is total revenue now from where to where?

Mr. **Knappen**. This would be Rapid City to Edgemont.

Senator **Pressler**. Rapid City to Edgemont. OK.

Mr. **Knappen**. Express revenue and package revenue, $23,040, giving a total operating revenue of $49,760.

Senator **Pressler**. OK.

Mr. **Knappen**. The total operating expense on the route is $198,053.

Senator **Pressler**. OK. Now, how did you arrive at that?

Mr. **Knappen**. OK. We have got about 10 different categories. Equipment, maintenance, and garage, $16,055. Transportation, $49,841.

Senator **Pressler**. Now, what is that?

Mr. **Knappen**. That is the basic operation of the bus, the driver expense primarily. Driver wages is the biggest component of transportation expense.

Senator **Pressler**. How many of those equipment and garages of that first one are in South Dakota?

Mr. **Knappen**. There is no garage. I don't believe that Trailways has a garage in South Dakota. That is the maintenance expense allocated to the bus providing that service.

Senator **Pressler**. OK. Now, how did you get that $16,000 allocated to that line?

Mr. **Knappen**. It is taken off of our operating expense statements, which are broken down by division. What I am reading to you from are the numbers that have been supplied to the public service commission.

Senator **Pressler**. But that fixed cost you would have either way. So what you are doing is just allocating a part of fixed costs to that line. Can you tell us how you arrived at that?

Mr. **Knappen**. Well, actually the maintenance cost is a variable cost, not a fixed cost. For the most part, you know, for every mile the bus operates, you know, there is going to be a certain maintenance cost involved.

Senator **Pressler**. The $49,000, that is salary of one driver?

Mr. **Knappen**. That is basically the wages for the drivers operating that service. That is the biggest component of it. Now, it also, I believe transportation expense includes fuel. I believe that is also included in the transportation expense. That would be the second largest component. There would also be, you know, there is an allocation for a supervisor's salary, somebody who supervises those drivers, and so forth.

Senator **Pressler**. All right. What else is there?

Mr. **Knappen**. Station expense, which is essentially the expense of selling the tickets, $39,409.

Senator **Pressler**. For selling tickets on that line?

Mr. **Knappen**. On that line for the year.

Senator **Pressler**. Is that located in Rapid City?

Mr. **Knappen**. Well, you have—I guess there are five stops in South Dakota, so it is the station expense in Rapid City plus the Commission expense in the four other towns involved.

Senator **Pressler**. You mean it costs $49,000 for the salaries of the bus drivers and the fuel, it costs $39,000 to sell the tickets?

Mr. **Knappen**. That is the main component. That is what is called station expense.

Senator **Pressler**. Now, what was the $39,000 again?

Mr. **Knappen**. $39,000 is station expense.

Senator **Pressler**. Station expense?

Mr. **Knappen**. Right, which is basically the cost of selling the ticket.

Senator **Pressler**. So it costs $39,000 to sell $49,000 worth of tickets for you?

Mr. **Knappen**. That's correct.

Senator **Pressler**. Now, that $39,000 to sell the tickets, what did that comprise of?

Mr. **Knappen**. That would be a per mile allocation on that division of station expense based on, you know, the ICC accounting procedures.

Senator **Pressler**. So it cost you $39,000 to sell $49,000 worth of tickets. Is that right?

Mr. **Knappen**. Yes.

Senator **Pressler**. Now, I hope we can get a better breakout of that. What else is there here in this?

Mr. **Knappen**. Insurance, traffic solicitation, and amortizing, $5,943.

Senator **Pressler**. That gets us up to what?

Mr. **Knappen**. We are about halfway there.

Senator **Pressler**. OK, keep going.

Mr. **Knappen**. Insurance and safety, $22,852.

Senator **Pressler**. $22,000 how much?

Mr. **Knappen**. $852.

Senator **Pressler**. All right. Will your insurance costs drop that much when you drop that line?

Mr. **Knappen**. That is more a fully allocated fixed cost than a variable cost. That is one of those ones which is a mix of the two.

Senator **Pressler**. That is a fixed cost, in other words.

Mr. **Knappen**. It is a split, but I would say more on the fixed side.

Senator **Pressler**. OK, keep on going.

Mr. **Knappen**. Administrative, $32,035. Again, that is more fixed. Not entirely, though.

Senator **Pressler**. $32,000 administrative? But wouldn't that come under selling the tickets? That was $39,000.

Mr. **Knappen**. No, administrative, as you know, your health and welfare. It includes Social Security and personnel taxes as opposed to operating taxes and licenses. And then it includes corporate overhead, so again, it is a mix of fixed and variable costs.

Senator **Pressler**. But the majority of that is in fixed costs, isn't it?

Mr. **Knappen**. That would be pretty close to 50-50, but you know, it could go either way.

Senator **Pressler**. So then does that total up to—so you are losing $150,000 on it?

Mr. **Knappen**. Well, the total operating expense is $198,000.

Senator **Pressler**. So does this add up to—there must be some more numbers.

Mr. **Knappen**. The other number is a relatively small depreciation, $2,265; operating taxes, $13,601; operating rents, $16,047. That should give you a total of $198,053.

Senator **Pressler**. We would like to go over some of these numbers. I just want to understand this better as I go along here, how these things are arrived at. It seems to me that a lot of these are fixed costs that might be allocated there. I am sure it costs a lot to operate, but I hope that we are not allocating things to a line that are fixed costs anyway. Part of that would have to be allocated certainly, but, for example, the $39,000 for selling the tickets, we have also got $32,000 for administration and $49,000—I am not really in a position to dispute these. They just look very strange to me at first glance, but I do want to look at them some more.

Mr. **Knappen**. Let me just give you a couple more overall numbers that might help in your analysis. The per mile revenue total of package express and passenger revenue, $57.8 cents per mile. The fully allocated cost per mile, you know, all of those costs are $2.29. Our estimate of the variable cost, and you are correct that, you know, part of the cost figures I have given you is fully allocated cost, is $1.39 a mile.

So the variable cost figure is substantially in excess of double the revenue per mile, and we are not talking about a contribution to overhead.

Senator **Pressler**. For the record, I would like your staff and my staff to go over these, and I may have an additional statement for the record.

Mr. **Knappen**. Certainly. You know, I might add just on the question of the ridership on that line, and I will also submit that to your staff, but the traffic analysis we did in terms of our filing to the public service commission was for June 1985. June is a fairly heavy travel month, and for the four points that will lose service, which are Hill City, Custer, Hot Springs, and Edgemont, the total number of people who got on or off the bus in the total of those four communities for the month was 78.

So, in essence that means that of the total of those four communities every day in the month of June one person got on the bus and one person got off the bus each day. And there is no way that we can survive in this environment and operate that kind of service.

Senator **Pressler**. OK. We look forward to going over those numbers with you. Senator Packwood has left me a note that he had to leave, and he asks that I adjourn the meeting. I am going to look here and see if we have any more questions that I have not covered. I think we have covered everything here, unless anybody has something for the good of the order.

Mr. **Celmins**. Senator Pressler, may I just make a comment on section 18. Senator, I know you expressed great concern about rural America. At Greyhound, when we get out of rural America, we are getting out of service, if we continue to do so, we will be out of business. We have attempted to utilize section 18 procedures to serve rural America.

Our first pilot program was the State of Wisconsin. Wisconsin, by the way, is a totally deregulated State and there is no economic regulation. We attempted to initiate a section 18 application in Wisconsin last December. There are two fundamental barriers that are presented for private carriers, and they are: No. 1, in most of the States a private carrier cannot make a direct section 18 application. Even if there is a city or a county or local unit of government that supports the application, the application must be made directly by a city or a county, and the city and county must, in turn, contract out with the carrier.

No. 2, the labor protection provisions of 13(c), as they are written, are so far reaching that the liability is overwhelming, and many cities and counties will simply not sign 13(c) warranties, notwithstanding the fact that there will be no other service over the rural routes. We have been able to prosecute the Wisconsin application through all steps of the administrative process. We have not yet received any funds. We have not signed our final papers for submission to the State of Wisconsin in order to receive funds. We do however, expect that these type of contracts could develop and could meet rural America transportation needs.

Senator **Pressler**. Thank you very much.

This hearing is adjourned.

[Whereupon, at 12:28 p.m., the committee was adjourned, to reconvene upon the call of the chair.]

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ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. EDWARD I. KOCH, MAYOR, CITY OF NEW YORK

Thank you for this opportunity to submit comments for inclusion in the record of your oversight hearing on the Bus Regulatory Reform Act of 1982 (Bus Act).

I would like to focus my observations on the misuse of the Bus Act by intrastate carriers, the detrimental impact of the fast growing number of transportation services authorized to operate on already congested New York City streets by the Interstate Commerce Commission (Commission), the definition of operator fitness, and the exemption for vans providing a single round-trip daily from the Commission's entry jurisdiction. These significant problems can be resolved with the relatively minor revisions that we are proposing.

ENTRY JURISDICTION

The City of New York has found that since the Bus Act became effective, there has been a growing abuse by intrastate bus and van services using shams to bring themselves within the jurisdiction of the Commission.

Prior to the passage of the Bus Act, local authorities had exclusive jurisdiction over intrastate transportation. The grant of authority included route designations and other service requirements, enabling a locality to control the flow of traffic, minimize traffic congestion and pollution, and ensure that adequate transportation is provided to meet the public demand during peak and off-peak hours. Carriers not interested in offering local service picked up and discharged their passengers in centralized off-street terminals.

The Bus Act provides that the Commission may authorize intrastate transportation on a route over which the carrier has authority to provide interstate transportation. Certain bus companies are operating on a purely intrastate or intramunicipal basis—providing no regular-route interstate service—and claim to be exempt from state and local jurisdiction, simply because of the broad authority granted by the Commission. New York City is currently litigating this issue with Erin Bus Company, a carrier transporting commuters between Brooklyn and Manhattan and relying upon a certificate from the Commission for its operating authority. The ICC has been asked to rule on this matter.

A second jurisdictional problem that we are experiencing consists of carriers who avoid state and/or local jurisdiction—although they operate from point to point within either the city or the state and do not provide any interstate service—by including in their route a segment of highway in another state.

Vanguard Bus Company operates a route which serves New York State residents only. Vanguard transports commuters between northern Westchester, a New York State county and New York City. They contend such route is under ICC jurisdiction since they travel along Interstate 684 in Connecticut for less than one mile. Bus companies serving only New York City residents similarly avoid local jurisdiction by taking commuters from Staten Island to Manhattan via New Jersey. These companies include Academy Bus, Eagle Bus Company, American-Italian Bus Company and Anna Bus Company, as well as a dozen others.

To prevent these abuses from continuing, we propose that Sections 10521(c)(2) and 10526(b)(1)(B) of 49 United States Code be amended to clarify that bus companies may not obtain intrastate authority from the Commission when they provide no interstate service; and that as long as no passengers are picked up in one state and dropped off in another, even if the bus passes through another state, the service is intrastate and not within the Commission's jurisdiction. (See Appendix for our proposed amendments.)

SERVICE REQUIREMENTS

New York City has no desire to infringe upon the Commission's function of determining operating authority where a carrier is properly under the Commission's jurisdiction. However, the proliferation of buses and vans authorized to operate on our local streets by the Commission has severely impacted our ability to reduce air pollution levels and maintain control over limited and over burdened street capacities.

Intrastate services authorized by the Commission constitute a significant and growing percentage of the buses in Manhattan. On a typical day in June last year, 20% of the almost 3,000 commuter and charter buses observed entering midtown Manhattan were presumably authorized by the Commission.

While the open highways between cities may be capable of and suitable for carrying the competing services of rival bus operators without special public controls, the same does not apply in cities like New York, where large numbers of buses operate amidst all other traffic on congested streets.

When the Commission authorizes local operations, it generally is silent about which streets the service may or may not use. Consequently, large numbers of Commission authorized bus operators load and unload passengers on such already crowded central avenues in Manhattan on Madison, Fifth and Sixth in the Central Business District (defined as 34th Street to 59th Street); and in downtown Manhattan on Broadway and Church Street, south of Chambers Street. This overloading has contributed to local traffic congestion and pollution.

The City recognizes the greater efficiency of carrying people on buses rather than in private cars and therefore applies the most advanced traffic techniques to give buses priority over cars. Despite these efforts, local bus traffic on Madison, Fifth and Sixth Avenues in Midtown Manhattan currently moves between 4.6 and 4.9 miles per hour during the peak evening hours. This is not much faster than walking speed, which is about 3.0 miles per hour.

Bus volumes now exceed 200 per hour on Madison and Fifth Avenues during the peak periods, and 160 per hour on Sixth Avenue. Conditions in downtown Manhattan are similar. The consequence is that virtually all available curb space is already being used as bus stops, displacing vital space needed by the business community; in addition, these avenues have "hot spots" where carbon monoxide (CO) levels are not within emission standards established under the Federal Clean Air Act, and increases in bus traffic hinder the City's efforts to attain these standards.

We strongly feel that the Commission should be required to take local conditions into account in determining whether authority will be granted. The Commission should be required to balance the needs of passengers against the overall effect on the public. Specifically, congestion, pollution and the impact that a new service will have on existing carriers should be considered by the Commission in evaluating whether a request for operating authority is within the public interest.

We cannot ignore traffic and environmental impacts when considering the Federal Clean Air Act of 1970, which requires us to achieve certain air quality standards. Since we are required to abide by all federal requirements, it is imperative that federal agencies acknowledge and act consistently with the requirements imposed by Congress.

The problems generated by the uncontrolled proliferation of carriers operating, with the Commission's authority, go beyond the traffic and pollution concerns that I have touched upon. These buses operate primarily during the lucrative peak periods, competing with the existing public transportation services provided by commuter rail, and public and private bus carriers. Most of these carriers already relay on federal, state and local subsidies. As a result of the reduction in peak hour ridership caused by this competition, subsidized carriers will require further governmental assistance which we anticipate at the Federal level will be diminishing. The joint efforts by government on all levels to maintain adequate levels of service particularly during off-peak hours is consequently hampered.

We believe the Commission must make certain that a municipality be notified when an applicant's proposed route will include local streets, thus giving a municipality an opportunity to participate in Commission hearings in which it has an interest. It is currently impossible to ascertain from the public notice provided when service will be conducted on local streets.

In cities such as New York where we are attempting to meet the Clean Air Standards, as a prerequisite to the grant authority by the Commission the City should be given the freedom to designate the streets, stops and layovers for the proposed routes. Certain streets in the City of New York are presently restricted to commercial traffic including buses and we need assurance that the Commission will not override the City's restriction. Further, in New York City where public funds have been expanded for the construction of off-street bus terminal facilities, the city likewise should have the option to require such buses to utilize the publicly funded and available terminals.

New York City, recognizing the saturation of certain streets, has formulated a policy which requires that new services authorized by the City utilize streets other than Fifth and Madison Avenues. The City should be able to impose this restriction on newly Commission authorized routes and these requirements should be included in Commission grants of authority.

Further, where operating authority is granted which would enable the applicant to compete against an existing carrier, the certificate should be conditioned on the applicant's providing adequate peak and off-peak hour service. This would assure that public need will continue to be met in the event that the existing carrier, for economic reasons, can no longer continue to provide the service.

FITNESS

There are two additional problems that I would like to touch upon briefly. The first concerns the need to define what we mean by fitness to operate. It is our understanding that today only the safety of equipment and insurance coverage is reviewed by the Commission. We believe that criminal violations, violations of the Commission's rules and regulations and the Bus Act itself, and other violations of the law should be taken into account in determining an operator's fitness.

VAN SERVICES

Second, we believe that the Act should be amended to eliminate the exemption from the Commission's authority for operators of a vehicle carrying not more than 15 individuals in a single daily roundtrip to commute to and from work. All persons are entitled to adequate insurance coverage and other protections afforded passengers of Commission authorized services. Furthermore, the violation of this exemption makes a farce of the Commission's intent.

SUMMATION

In summary, we believe that relatively minor changes in the Bus Act and the Commission's administrative procedure would strengthen the ability of localities to deal with the burdens imposed upon them by the growing numbers of interstate buses without compromising the general intent of the Act to ease entry into the market. We ask that the Act and the Commission's procedures be revised as follows:

First, Section 321 of H.R. 3129 should be expanded to further clarify that the applicable locality, and not the Commission, has jurisdiction over buses and vans that are providing an intracity or intrastate service but whose routes traverse a portion of an adjacent state; and that jurisdiction is with the applicable locality.

Second, impacts on congestion, environmental pollution and existing transportation services should be considered by the Commission as part of the public interest test.

Third, local governments should be given notice and be provided an opportunity to comment when a grant of authority is being considered which will enable the carrier to use its local streets.

Fourth, in cities attempting to meet the Clean Air Standards, as a prerequisite to the grant of authority by the Commission the City should be given the freedom to designate routes, stops, layover areas, and terminals for the portion of the route within its boundaries. These service requirements should be included in the Commission's certificate granting authority.

Fifth, street restrictions imposed by municipalities on carriers they authorize should be included in Commission grants of authority at the request of the municipality.

Sixth, where operating authority is granted which enables an applicant to compete with an existing transportation service, the certificate should require that the applicant provide both peak and off-peak hour service to meet the public need.

Seventh, criminal violations, violations of the Bus Act and the Commission's rules and regulations, and other violations of the law should be taken into account in determining an operator's fitness.

Eighth, the exemption for vans providing a single round-trip daily should be eliminated.

Our final recommendation is that the Act should be amended to require that the procedures that apply to applications for regular-route service should be applied to applications for charter or special services that will be operating primarily along the same streets with the same stops every day. They produce the same traffic impacts as regular-route services and should be required to meet the same requirements. Currently, these applications may be opposed solely on "fitness only" grounds.

We urge the Congress and the ICC to take action on these recommendations. These measures will help municipalities strike a balance between the regulation of traffic on our streets and the promotion of competition in interstate commerce.

Thank you.

APPENDIX

NEW YORK CITY'S PROPOSED AMENDMENTS

To clarify that carriers may not obtain intrastate authority from the Interstate Commerce Commission (Commission) when they provide no interstate service, and that an intramunicipal service whose route runs through another State is not within the jurisdiction of the Commission, we propose that the following paragraph be added to 49 U.S.C. Section 10521(c)(2): "(J) Any certificate issued under this paragraph to provide intrastate transportation of passengers on any route shall be subject to a condition which limits the authority of the carrier to provide such intrastate transportation only as part of regularly scheduled interstate transportation involving the interchange of passengers between states."

In addition, to eliminate any potential ambiguities, we propose a modification to 49 U.S.C. Section 10526(b)(1)(B) that would clarify further that a carrier providing a service entirely in a municipality, but whose routes goes through another state, must obtain operating authority from the municipality. Currently section 10526(b)(1)(B) gives a carrier providing this service the choice of either obtaining authority from the applicable States and municipalities, or applying to the Commission for authority.

Specifically, we propose that the bracketed language be *deleted* from section 10526(b)(1)(B), which states that the Commission does not have jurisdiction under this subchapter over—

(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

(B) that in transporting passengers over a route between a place in a State and a place in another State, [or between a place in a State and another place in the same State through another State,] the transportation is exempt from the jurisdiction of the Commission only if the motor carrier operating the vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs.

STATEMENT OF MAJ. GEN. HAROLD I. SMALL, USA, DEPARTMENT OF THE ARMY

The Military Traffic Management Command (MTMC) is the Department of Defense's (DOD) Single Manager for Military Traffic, Land Transportation, and Common-User Ocean Terminals. As such, MTMC manages the worldwide personal property program for all of the military services. MTMC establishes policies and procedures, centrally negotiates all rates, and continuously monitors the program. The military services execute the program through their 270 shipping offices around the world, following the policies, regulations, and procedures established by MTMC.

The DOD is the nation's largest single shipper of personal property with 580,000 shipments through the 3rd Quarter of fiscal year 1985, and we project over 800,000 shipments will be moved in fiscal year 1985 at a cost of one and one-half billion dollars. This is the fifth consecutive year we had over 750,000 shipments and over a billion-dollar personal property program. Due to the magnitude of the personal property program, DOD has established procedures for the selection of carriers, distribution of traffic, computation of charges, and quality control. The DOD uses those carriers with operating authority from the Interstate Commerce Commission (ICC). This traffic is distributed in such a manner as to reward carriers who provide quality service at the lowest overall cost. The rates DOD pays are submitted voluntarily by commercial carriers. A program of this magnitude requires an effective quality control program at both the local and national level.

Our goal in managing this program is to obtain the highest quality service possible at the lowest overall cost to taxpayers. Accomplishing this goal is a delicate task, due to the moral implications of moving members' personal possessions successfully within budgetary restraints. The quality of personal property moves has a direct effect on the retention and quality of life of military members and their families. Recent improvements in the program are reflected in a current trend in the number of complaints from military members.

HOUSHOLD GOODS TRANSPORTATION ACT (HHGTA) OF 1980

The HHGTA of 1980 has had a significant impact upon the way DOD does business with the moving industry. Three stated purposes of the Act have assisted the DOD in conserving taxpayers' dollars while providing the best possible moving service for military members. These purposes are:

a. fostering competition,
b. protecting shippers, and
c. reducing unnecessary regulation and paperwork.

The DOD has experienced more competition from the moving industry since passage of the Act. There are more carriers voluntarily participating in the DOD program who file competitive rates. For example, MTMC now acquires rates directly from individual carriers rather than from rate bureaus. In compliance with the Act, MIMC has made great strides in reducing unnecessary paperwork for both the moving industry and DOD. Subsequent to the legislation, MIMC developed the CONUS Automated Rate System (CARTS), which has been approved by the ICC and the General Accounting Office. By processing approximately 3 million rates filed twice a year on automated tape, the carriers no longer need to prepare, nor does MTMC need to manually process, about 90,000 paper rate tenders each year. As a side benefit, MTMC also experienced a drop in the error rejection rate for improperly filed rates from 22 percent to less than one percent under the automated system. This new system has been applauded by the moving industry.

The DOD only uses carriers with formal authority from the Interstate Commerce Commission (ICC), or the appropriate state authority for intrastate shipments. MTMC utilizes the ICC rules and regulations for the base of its personal property program. The two exceptions are the automated CARTS rate system and the DOD reweigh program.

The ICC established a reweigh rule that charges would always be based on the reweigh weight, regardless of the difference in the two weighings. The new reweigh rule has shifted the risk of reweigh from the carrier to the individual shipper. If applied to the DOD, the individual military member must assume the risk of additional personal cost. MTMC determined that this rule was not in the best interest of either the taxpayer or the individual military member. The ICC, on its own initiative, published a formal Interpretive Statement on 17 June 1982 which held that the DOD could use its own reweigh rule.

In summary, the DOD is pleased with the deregulation efforts of the Congress. The Household Goods Transportation Act of 1980 has fostered competition, provided protection for the shipper, and enabled individual carriers to operate in an independent manner. Most importantly, it has enhanced the DOD's ability to procure quality moving services at the lowest overall cost to the taxpayer.

BUS REGULATORY REFORM ACT OF 1982

The DOD makes extensive use of the nation's commercial bus system for transportation of its personnel. In fiscal year 1984 the DOD moved approximately 2.1 million passengers by bus at a cost of 26 million dollars. Of this total, about half was in scheduled service and half in charter service.

To date the DOD has experienced no problems with the levels of service provided by motor bus carriers in either scheduled or charter operations as a result of the Bus Regulatory Reform Act. There has been a substantial increase in the number of carriers doing business with DOD, particularly in charter service, and it appears the increased competition has had a beneficial effect for the DOD.

Statement of John T. McBrayer, Government Liaison Officer, Movers' & Warehousemen's Association of America, Inc.

Mr. Chairman, and members of the subcommittee: My name is John T. McBrayer. I appear before you on behalf of the Movers' & Warehousemen's Association of America, Inc. The MWAA is headquartered at 1001 North Highland Street, Arlington, VA 22201. MWAA is a nonprofit membership corporation and tariff publishing agent for more than 360 motor common carriers authorized to transport household goods in interstate commerce pursuant to authority issued by the Commission. The membership of MWAA generally comprise the smaller and independent motor carriers in the household goods industry.

This is my fourth appearance before this oversight committee. Each time I have pleaded for reconsideration. I again am asking this committee to give further consideration to the needs of the household goods industry.

GOVERNMENT TRANSPORTATION

The Department of Defense, through its single-management agency for surface transportation, the Military Traffic Management Command, now publishes the rates and rules for the transportation and storage of household goods, and currently is considering the provision of government warehousing for storage-in-transit. On the freight side, rate solicitations increasingly specify that only those bidders who hold unrestricted operating authority can qualify to submit bids, effectively limiting the number of carriers who can bid to a handful of the nation's largest carriers.

The General Services Administration, which follows the lead of DOD, currently is pushing, a "city-pairs" concept. Perhaps a few of the very largest carriers could generate tonnage enough between two cities to qualify as bidders; however, the real facts are that no equality exists in comparable tonnage between any two cities.

NO NEW LEGISLATION IS NEEDED

At the outset, before discussing in detail the matters which we think are of comcern to Congress at this time, we would like to note that we recognize that there are pending before Congress two new bills, passage of either of which would result in total deregulation of the motor carrier industry. It is the position of MWAA that the time is not right for the passage of such legislation. The motor carrier industry as a whole, and most especially the household goods industry, have not recovered nor adjusted to the changes brought about by the passage of the 1980 legislation. This legislation drastically changed the way in which motor carriers were doing business and began to open up new areas of competition.

Since the passage of that act it can safely be said that business has been done as it has never been done before. Whereas previously the dominant motor transportation was common carriage, transportation in the household goods industry for so-called national account shippers is now dominated instead by contract carriage. To the extent that contract carriage is not used for non-government transportation there are now in effect new methods of competing through innovative rate filings. The industry is going through a serious crisis at this time as to insurance. With a rapid change in the number of carriers in an increasing number of bankruptcies, it is becoming ever more difficult for the carriers to adjust. What these carriers need is a time in which to have a thorough shake out of the industry and a settling down from the last legislation. At that time it can be considered whether or not a new wave of deregulation is necessary or even if some new type of regulation is required.

In the event that further legislation is passed to deregulate the industry, we shall discuss later certain matters which we believe should be included in that legislation in order to enable the household goods industry to continue to do business in an orderly fashion.

MORE DIRECTION IS NEEDED FOR CONTRACT CHARRIAGE

One of the most pressing problems facing the industry today is the current massive use of contract carriage in transportation. Due to Commission changes in dealing with contract carriage it has become the vogue to use this. The Commission now allows carriers to serve a class of shippers and in the household goods industry allows them to serve persons, except individuals, under contract. Other Commission rule changes have eliminated the need to file contracts with the Commission and it is no longer required that a contract carrier file a schedule of rates and charges.

With the advent of this change there has been an insistence by shippers that broad contracts be entered into, contracts which do not fulfill the contract carrier obligation. This is because these contracts are no longer requiring that a certain number of shipments be handled or that there even be specialized service. They are dictated by the shippers and the carriers, having to compete with other carriers, are forced to comply with them. The Commission's enforcement staff is greatly diminished and it is virtually impossible for it to go into the field to inspect these contracts to assure that they comply with the contract carrier requirements.

Yet this Congress has seen fit to establish different criteria for contract carriers and it has done so for good reason. This is because only in this way may there be an opportunity for common carriers to properly compete with contract carriers and for them to be assured that there is not a benefit given to some not available to others. Only in exchange for the quid pro quo of a contract giving it a certain number of shipments, allowing it to provide a specialized service, can a carrier then offer the advantages of contract carriage with its usual captive arrangements for a shipper.

We urge that Congress direct the Commission to see to it that there is appropriate enforcement of these provisions in order to assure that there is available an ample supply of equipment for all shippers. This is because if certain shippers are able to take the scarce amount of equipment available for their usage in contract carriage, then there will be less equipment available for other shippers to utilize.

It must be recognized that the United States government moves all of its shipments by common carriage and the Department of Defense is one of the largest shippers served by the household goods industry. If for competitive reasons household goods carriers are more and more being forced to rely upon contract carriage with the large national account shippers which have been such a large part of their service for so long, then the situation is apt to become worse. The individual COD shipper and the government shipper will suffer.

We urge then that Congress look again at the situation and that it provide a means whereby the Commission may better enforce the contract carrier requirements now a part of the Act, and most especially we urge that those requirements be continued and given viability for the reasons that were initially intended and have been for so long a time a part of the Interstate Commerce Act.

NEW DIRECTION IS NEEDED ON COMMON CARRIER RATES

To some extent, the previously described contract carrier problem has been overcome by a new method of handling shipments through common carriage. Using the binding estimate provisions of the Household Goods Transportation Act embodied at 49 U.S.C. § 10734 a household goods carrier may establish a rate for the transportation of household goods based on the carrier's written, binding estimate of charges for providing such transportation. The carriers in the industry have now coupled this provision with the Commission's regulations allowing for publication of rates for a named shipper identified by a number instead of name. What this does is allow for the institution of a special rate for a certain shipper without this rate being divulged to competitors so that they may offer an even cheaper rate to that shipper. The new practice among household goods carriers then is to publish a tariff which gives various discounts from the linehaul tariff provided most shippers and then to assign a shipper a number on a per shipment basis which matches the amount of discount. In this way there is constant flexibility with the shipper being offered the lowest possible rate on each load quickly and easily. What this is doing then is destroying the entire purpose of having tariffs. Congress has always required the publication of tariffs by common carriers. At 49 U.S.C. § 10761 it is required that all common carriers must file tariffs without exception. That provision states that the Commission is not to allow a carrier to deviate from its tariffs. Further regulation is provided by 49 U.S.C. § 10762. In filing their rates carriers are not to discriminate between shippers. Yet what we have here is a mechanism by which a carrier's rates are a sham. There is no reason for that carrier to abide by any tariff because it is able to publish discounts to match anything that it wishes to impose. Commission regulations allow one day's notice to change a tariff, but even this need not be complied with because the shipper will be assigned a number to match that tariff which allows for discounts.

This can cause great harm to small carriers which cannot adequately compete with carriers able to provide reductions well below their costs. Such small carriers cannot be aware of what is being published. Furthermore, certain shippers may be favored over other shippers. In effect a rebate may be provided to a shipper by providing it extremely discounted rates on one shipment while providing a different rate on other shipments.

Regulation is still in effect but the Commission has condoned a practice which does away with that regulation. It allows carriers to altogether escape supervision by the Commission and to avoid the Commission and its competitors from knowing what they are doing.

We urge that Congress investigate this matter thoroughly and give direction to the Commission so that it may take appropriate action to remedy this. Congress never intended for its provisions to go this far. The binding estimate provisions were intended to help the individual shipper to negotiate a rate favorable to it. They were never intended by Congress as a means to serve large shippers and thereby to usurp the business of smaller carriers.

TAXATION IS STILL A PROBLEM

The vitality of carriers continues to be sapped by the continuously growing and insistent demands of each jurisdiction through which they operate. Yes, I know that the matter has been under study for years, and that recommendations are being made by the Department of Transportation to the Congress. I know, also, that in 1959, in the *Northwestern* and *Stockham Valve* cases, the Supreme Court of the

United States threw up its hands and said clearly that it is the responsibility of the Congress to cut the tangled underbrush of multistate taxation.

The Congress assigned the responsibility to the House Judiciary and Senate Finance Committees, which responsibility devolved on a special subcommittee on state taxation of interstate commerce, under the chairmanship of Mr. Willis of Louisiana. Substantial strides were made. Though the goals were limited to four types of taxes, the principle being advanced was to define a nexus, a minimum connection, below which no locality or state could assess and levy taxes against an interstate carrier. That legislation was approved by the House by large majority three times in the 1960's, and each time was pigeonholded in the Senate Finance Committee.

Valiant efforts of the House Judiciary Committee, and its chairman, were frustrated by mounting criticism from organizations of state officials, and some large carrier and industrial interests, who sought and still seek uniform levies and assessments by all jurisdictions in which a carriers may operate. Some large carriers and industrial giants tie in their computers to state computers, and while such arrangements may satisfy their particular interests, it is not a system appropriate, feasible or practicable for the preponderance of interstate carriers.

It is disappointing and distressing now to read in trade papers that the National Governors Assoication is calling on the Federal Highway Administration for help in putting together a program of uniform state procedures, to avert Congressional initiative, and, moreover, the governors seek $750,000 from FHWA to underwrite their program.

Standardized bonding, reporting, recording, accounting, and auditing with each jurisdiction is not the answer. One very important goal of the Motor Carrier and Household Goods Transportation Acts of 1980 was stated to be the eliminlation and reduction of paperwork. The costs associated with most local and state taxes have been shown time and again to exceed the revenues produced.

The multiplicity in the number and types of local and state taxes can be likened to the nine-headed serpent of Greek mythology. When any one of its heads was cut off, it was replaced by two others. When two were cut off, four others appeared. The same geometric progression is at work in the field of state and local taxes.

Only this Congress can provide for an effective Commission, independently and competently administered.

These responsibilities belong to the Congress alone, under the Commerce Clause, Section 8, Article 1, of the Constitution of the United Sates of America.

Experienced, thoughtful, motor carrier executives, in large numbers, are turning their talents, resources, and investments elsewhere. For in addition to those very large problems above, which require a sane man to consider the hazards of operating even one vehicle in interstate commerce, the incentive to conduct such operations has all but disappeared.

THE INSURANCE PROBLEM HAS BECOME A DISASTER

One of the most pressing problems facing the motor carrier industry at this time is that of liability insurance. Within the last year insurance carriers have totally reassessed their means of providing such insurance to motor carriers and the carriers have found that their rates have gone up by 300 to 400 percent. What has resulted is a new type of regulation of the motor carrier industry, and that by insurance companies. These companies individually assess rates upon carriers and if the carriers find that they can no longer operate under these rates they are going out of business. The insurance industry claims it must do this because of the increased costs to it of handling motor carrier liabilities. It claims that it has found that the costs of paying claims far exceeds the low premiums previously charged. In order to again make a profit the new premiums must be imposed.

This then is yet another reason why Congress cannot deregulate further at this time. If the industry has had problems under the previous Act with the new forms of competition entering, it shouldn't be faced with new stresses on top of this additional burden of insurance. Instead, we urge that Congress look into this problem as to possible alternatives. Detailed hearings and studies should be made as to the allegations of increased claims. The Congress might wish to look into possible new ways of settling the damages arising from motor carrier accidents. In addition, it should examine whether or not the insurance industry has truly based the amount of its premiums on actual statistical findings as to the probability of damages in the future.

Beyond this, Congress should look to see whether or not the present levels of insurance are proper. It should be noted that following the passage of the 1980 Act, the DOT and ICC raised the amount of liability which each carrier must have. This was done regardless of the individual carrier's past record as to accidents or the size of the carrier. We urge that Congress consider whether or not it should change the standards to reflect a carrier's safety record and the size of its operations. The amount of insurance carried should reflect the probability of payment which will arise. Carriers with good safety records and carriers carrying extremely non-hazardous commodities, which most definitely includes all of the household goods carriers, should not be forced to carry this high liability insurance. Quite frankly, there is little or no change of harm coming from the cargo of a household goods carrier in the event of an accident. When this is compared with various hazarous commodities such as chemicals, it can be seen that lower levels are needed. It is recognized that hazardous commodities now carry a higher level of requirement for insurance, but there are certain in-between commodities which do not require this. But household goods do not come even within this grouping so a yet different level should be imposed for them.

In fact, coupled with this is the entire matter of motor carrier safety. Congress has been noting recently the increased number of motor carrier accidents. These, we believe, have come about for two reasons. First of all, with the large number of carriers now entering the field, there is a greater probability that unsafe carriers will be present. This is especically so when little or no check is make of new entrants to see whether or not they are safe carriers. Secondly, there has been increased private carriage and these carriers have not been as closely watched. In fact, testimony before the Government Operations Committee recently revealed a DOT listing of some 3,000 carriers which were rated either conditional or unsatifactory as to their safety records. What is remarkable from examining this, however, is that most of the carriers included were not truly "carriers" as known to the ICC, but were non-regulated entities such as private carriers or exempt carriers. What this shows is that regulation has assured that carriers are operating safely by the oversight given them by the Commission as well as the threat that the Commission can take action to revoke their authority.

What should be done then is not to do away with this regulation, but to see to it that the Commission acts even more forcefully to regulate the industry. In this way the shipping public can be assured of having safer carriers. The statistics quoted show that absent an ICC, this is not likely to happen.

COMMISSION PERSONNEL LEVELS SHOULD BE STABILIZED

All of the above have pointed to the need for increased ICC surveillance of the industry and carrying out of the past aims of Congress. Yet in this last year the Commission has gone through one of its most severe crises in its history. What it has had to suffer is a cutback in the money available to it meaning that employees were out on a regular furlough basis for the Commission to stay within its budget. Overall, the Commission has cut back severely on its personnel. Doing so has caused great sacrifice in its ability to promptly oversee the regulation of the motor carrier industry. We have cited numerous instances above in which the Commission should be looking more closely at carrying out the aims of the 1980 act. We respectfully submit that it has not been able to do so because it simply does not have the resources available from Congress to so act. Adequate revenue levels should be made available to the Commission so that it can act properly in these areas in the future.

THE ANTITRUST IMMUNITY FOR POOLING MUST BE PRESERVED

In all of our above testimony we have discussed the need for continued regulation. We have tried to make it clear to Congress that this is not the time to pass additional legislation attempting to deregulate the industry further. MWAA wishes to emphasize that it does not in any way support any such legislation. In the event that there is any further legislation, however, there are certain areas that we feel must, no matter what is passed, be available to us. There are inherent protections now provided the household goods industry for good reason which must continue.

The first of these is as to pooling. Although we feel sure that members of the Committee are more than aware of the nature of motor carrier pooling, and the manner in which it is used in the household goods industry, we still would like to at this time review this somewhat. Pooling is the combining together of carriers to share either traffic or revenues. What commonly happens in the household goods industry is that a carrier obtains a load which does not in any way fill out its truck. This is quite common since it is virtually impossible for any one household to approach truckload levels. This is one problem then that leads to pooling. The other problem is the imbalance of the household goods industry and the nature of the destinations and origins served. Almost anyone could become a customer of a household goods carrier. Frequently loads originate or are destined to points to which a carrier may not have other traffic moving. Once these points are reached it is difficult to obtain a load back to origin. When this is combined with the relatively small size of the loads it can be seen that the carrier has a problem filling its trucks.

This problem has been remedied, most especially in recent times, by pooling of shipments. Carriers make known to yet other carriers the loads they have available and if it is not feasible for the carrier that originally booked the load to do so, it will award the traffic to another carrier in return for obtaining a share of the revenue. By combining loads together shippers need not wait to have their loads moved and carriers move more economically, which savings are then passed on to shippers.

These pools exist frequently between carriers and their agents. The agents have their own authority and book their own traffic on this authority. At the same time either they, other agents, or the van line itself is booking loads in the name of the principal carrier. These then are pooled together under the arrangement described above. The second type of pool is between non-affiliated carriers. In fact, MWAA has been given approval in No. MC-F-15793 to operate one of these pools. Any member of MWAA can offer either through computer posting or direct contact loads for pooling with other members of the association that belong to the pool. A set formula has been established for the division of the revenues.

In order for one of these pools to properly operate, of course, carriers must be free to discuss what traffic they have available and the rates under which that traffic is to move. This is inherent to the operation of a pool. Otherwise, a carrier cannot be sure that it will be booking traffic and handling it at a rate which is compensatory to it. The originating carrier may have quoted a rate which is not compensatory or the carrier that actually handles it will not provide adequate return to the carrier which gave up its opportunity to move the load. The carriers then must engage in intensive discussions as to the level of rates to be provided.

The Interstate Commerce Act presently provides an exemption from the antitrust provisions in the event that such a pool has been approved by the Commission. That Congress saw the benefit to these pools is evident from the fact that the Motor Carrier Act of 1980 made it easier for carriers to enter into the pools without Commission intervention. Prior to that time the Commission was reluctant to approve a pool and did so only after lengthy hearings. Under the new act the presumption is that the pool is acceptable and if the Commission does not within a set number of days reach a different conclusion then the pool is approved. This has led to an increased amount of pooling, including the MWAA pool which we have described.

These advantages will be lost to the shipping public if an exemption for pooling is not retained. We therefore urge that Congress do so regardless of what else it does with motor carrier regulation.

COLLECTIVE RATEMAKING MUST BE RETAINED

As is well known, common carriers may still engage in collective ratemaking for joint line shipments and to the extent they are instituting general increases, among other limited matters. In fact, MWAA is a rate bureau publishing such rates in behalf of its members. It is urged that this antitrust immunity be retained. This is most especially true in the case of small carriers such as those belonging to MWAA. This is because these carriers frequently cannot move traffic throughout the country on their own equipment and instead engage in joint line operations with other carriers. In order to do so they must have the limited antitrust immunity now provided them so that they may discuss freely with these carriers the rates to be provided for this joint transportation. As to such immunity the companies will not be able to see to it that compensatory rates are in effect throughout the joint line movement, in which event they must disengage from such operations and cut back considerably on their own operations. Their only alternative will be so-called single line rate movements. This means that one carrier will move from point A to point B and then another carrier will have to arrange a move from point B to point C. By their very nature this is a more expensive means of moving for the shipper and a more difficult means. We therefore urge that this immunity be retained.

There are other areas where immunity is now available and should continue to be available. Small carriers need the common assistance of each other in order to adequately publish rates and see to it that a common level of rates is available. This is not to say that they should have freedom to see that shippers are improperly harmed by rates. Under the present legislation only regional costs may be discussed. But it is difficult for a small carrier to develop its own costing. By joining together with other carriers it can more readily determine what the costs are to the industry and set its rates. To this extent then the immunity must and should be left available.

Carriers are to a large extent discounting from these rates, but they must have a means to determine together what the proper rate to set is. To do so is difficult in the motor carrier industry without the common endeavor now provided by the rate bureau. It is because of this that Congress allowed the institution of these and this should be continued no matter what.

THE CARRIER-AGENY ANTITRUST IMMUNITY MUST BE RETAINED

Another matter which must be retained even if new legislation is passed is as to the antitrust immunity for discussion of rates between carriers and their agents. This is inherent to the industry and will become even more important if deregulation is ever passed. This is because agents will then be able to more freely participate in traffic. Absent some antitrust protection it would be wholly improper for a carrier and an agent to discuss the rates of the principal carrier. Yet a carrier cannot continue to do business with his agent by nature if they cannot discuss these rates. Agents are always paid a percentage of the revenues obtained or by some other formula based upon those revenues. Whatever method is used the agent must be assured that there is a profit available to it. The agent then must give the carrier input as to what the proper rates are. When dealing with shippers such as the military, there must be an understanding of the basics of operation at that base. This is also true for agents which serve large national account shippers, such as in the transportation of what are now called third proviso household goods, which include commodities such as computers. Without this ability to talk freely about these rates then, the agents and carriers will not be able to work together and if they cannot work the industry as a whole cannot operate.

It must be understood by Congress that the only means by which a household goods carrier may blanket the country and provide complete services at all points is to do business through these small businessmen allied with it as agents. Everything must be done then to ensure that this method of blanketing the country with adequate household goods service is continued and retention of immunity is the only way in which this can be done.

CONSUMER PROTECTION MUST REMAIN AT THE ICC

Under the proposed legislation of the Department of Transportation once the industry is deregulated continued regulation of the consumer protection area will be retained at the Federal Trade Commission. We submit that this is a serious mistake. The Federal Trade Commission has never had experience in dealing with household goods carriers and their shippers. This is an area in which the ICC has had inherent expertise and understanding of the complications in the transportation industry. It is the reason that this Commission was originally established. The FTC may have some knowledge of consumers and their problems but does not have any knowledge of ongoing needs as to transportation or the difficulties in providing service in the transportation industry.

What MWAA urges then is that handling of this area be left with an agency which comprehends transportation and has had experience in that. This then is what we urge be done here.

CONCLUSION

I urge that Congress take action along the lines which we have outlined above. We wish to emphasize that we see no need for further deregulation at this time but instead that new regulation be instituted to clarify the requirements of the Interstate Commerce Commission to protect the public interest. We then ask that such strong direction be given to the Commission.

Thank you for your attention.

STATEMENT OF JOHN K. MLADINOV, EXECUTIVE DEPUTY COMMISSIONER, NEW YORK STATE DEPARTMENT OF TRANSPORTATION

The New York State Department of Transportation (NYSDOT) respectfully submits this Verified Statement regarding the Bus Regulatory Reform Act of 1982 (Bus Act) for the Committee's consideration in evaluating the impact of the Bus Act on intrastate bus service in New York State.

BACKGROUND

NYSDOT is the State Agency in New York that has regulatory jurisdiction over common and contract carriers of passengers by motor vehicle within the State. There are over 950 private bus carriers that hold NYSDOT certificates or permits to provide for hire passenger transportation services. One hundred six of these carriers provide regular route bus line service for the general public on an individual fare basis and receive financial subsidy from NYSDOT. In 1984, these 106 carriers operated over 88 million route miles and carried over 139 million passengers. In addition, there are also 287 bus carriers that provide transportation service to the general public in non-bus line service. This type of service is generally provided in small vehicles (i.e., 20 passenger capacity vans) over irregular routes and on a prearranged or advanced reservation basis. The vast majority of the 287 carriers are engaged in commuter operations around major metropolitan areas.

New York State has also established and is presently funding five major Public Transportation Authorities in upstate New York that provide transportation services to the public in the Albany, Utica, Syracuse, Rochester and Buffalo metropolitan areas. In 1984, these Public Authorities operated 50 million route miles and carried over 98 million passengers. In addition the State funded New York City Transit Authority transports 550 million bus passengers annually.

I would also like to make the Committee aware that:

The New York State Legislature recently amended the State's regulatory laws (effective January 1, 1984). The new State regulatory laws encompass many of the principles contained in th Bus Act, particularly in the area of eased entry.

New York is also committed to a substantial subsidy program to enable the public to have a safe and efficient transportation network at reasonable fare levels. From 1975 to 1985 over $3.7 billion was provided by the State to subsidize bus and commuter rail passenger operations. In the present State Fiscal Year [April 1985 to March 1986], the State has committed over $700 million in the form of operating assistance to mass transportation.

NYSDOT is the State Agency that has the responsibility for administering both the State's subsidy program and its intrastate economic regulatory program. It is the explicit policy of NYSDOT to fully coordinate its regulatory powers concerning entry, discontinuance of services and bus fares with its subsidy program for mass transportation.

The above statistical data is presented to give the Committee an idea of the overall magnitude of the passenger transportation system as it presently exists in New York State.

PURPOSE

The purpose of this statement is to demonstrate to the Committee that the regulatory actions of the Interstate Commerce Commission (ICC) do not conform to the intentions of Congress as outlined in the Bus Act. In addition, these ICC actions work in contravention to the State's efforts to promote a sound transportation system within the State of New York. The two major areas which NYSDOT desires to address in this statement are the ICC's practice to allow discontinuance of intrastate bus services within the State and the practice of the ICC to grant intrastate bus operating authority within the State without assessing the impact that it will have on the existing transportation network.

DISCONTINUANCE OF INTERCITY BUS SERVICES

NYSDOT has recently been involved in a discontinuance proceeding before the ICC on a petition filed by Greyhound Lines, Inc. (Greyhound) to abandon service on three intercity routes in New York State. The ICC decision was dated July 23, 1985 [No. MC-1515 (Sub-No. 378)] [Attached as Appendix I].[1]

In service discontinuance petitions, the ICC must consider the following major issues: [Title 49 Section 10935(g)(2)] (1) The National Transportation Policy; (2) if the carrier is receiving, or has an offer for, financial assistance to continue the transportation, and; (3) if the transportation is the last bus service available and whether there is any reasonable alternative service.

The National Transportation Policy (NTP) as contained in Title 49 Section 10101 is self-explanatory and there is no need to go into detail of each of the specific provisions. It is sufficient to say that, NYSDOT is in basic agreement with the concept and the intent of the provisions. It should be noted that while the NTP calls for cooperation with each State and with the officials of each State on transportation matters, the ICC has *never* conferred or consulted with NYSDOT on any of the locally important transportation policy matters concerning entry, exit or rates as Congress intended.

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[1] The appendices were not reproducible and are in the Committee files.

The second major issue concerning service discontinuance requires the ICC to consider whether the carrier is receiving, or has an offer for, financial assistance to continue the transportation. Under the Bus Act, the ICC is required to give great weight to the extent to which revenues are less than the variable costs of provding the transportation. There is no question that in the Greyhound discontinuance case cited in Appendix I NYSDOT paid Greyhound $243,590 for the period April 1, 1984 to March 31, 1985 and that NYSDOT offered to pay Greyhound additional financial subsidy of $244,000 from April 1, 1985 to March 31, 1986. These offers of subsidy were ample to cover the variable cost shortfall [revenues less variable costs] of $215,046. Despite the fact that NYSDOT was fully agreeable to a subsidy level of $244,000 [which exceeded the variable cost shortfall by over $28,000], the ICC determined that Greyhound was entitled to $547,140, or any such other amount as mutually agreed upon by the parties. The ICC concluded, ". . . There is no basis to conclude that the amount of the subsidy sought by Greyhound (sic $547,410) is unreasonable or inappropriate under governing standards . . .". [Page 22 of Appendix I]. NYSDOT thought it understood the governing standards envisoned by Congress on discontinuance proceedings relating revenues to variable costs. The ICC however ignored those standards and instead of variable costs used fully allocated costs plus a ten percent profit.

NYSDOT contends that the decision of the ICC attempted to dictate the terms of the contract and contradicts the intent of Congress relating to variable cost standards. Did Congress really intend to empower the ICC with such far-reaching authority?

The third major issue on discontinuance proceedings requires the ICC to consider whether the transportation is the last bus service available and whether there is any reasonable alternative service. To put the ICC's lack of concern for the intent of Congress as legislated in the Bus Act and for the riding public into perspective, one only need to look at the following statements made in its decision:

"Because of the remaining intermediate point service, no point on the Schenectady-Binghamton route or similarly, on the Binghamton-Cortland route will be more than *25 miles* from Greyhound service." [emphasis supplied] [Pg. 18 of Appendix I].

Referring to the Warrensburg-Plattsburgh-Saranac Lake route, "No service point is more than *20 miles* from Greyhound's points." [emphasis supplied] [Pg. 18 of Appendix I].

Finally, the ICC maintains in its decision on Page 20 that, ". . . Continuing operations over the closely parallel interstate highways generally is no more than a mile from the existing intermediate points . . .". The ICC fails to add that while the limited access interstate highway system is only one mile away it is only accessible by the public at interchanges that are up to *25 miles* away! Does the ICC expect the riding public to climb chain link fences and flag down a bus on an interstate highway? Was this what Congress intended when it established the requirement for the ICC to consider "last bus service available or whether there is any reasonable alternative"?

RECOMMENDATIONS ON DISCONTINUANCE

In case after case on a national level and in the case shown on Appendix I regarding Greyhound's petition to discontinue New York State service, the ICC has shown a total disregard and lack of concern for the welfare of the riding public. To suggest that bus service within 20 to 25 mile distance is available alternative bus service for rural residents that are totally dependent upon bus service is incongruous!

It also requires a stretch of the imagination for the ICC to completly disregard the Congressional intent and to rule that unless a State Agency offers financial assistance that provides a 10% profit margin on the total costs allocated to a particular rural route that the carrier can abandon its obligations to the riding public under the Bus Act.

Congress recognized the importance of preserving rural bus service for those dependent upon it when it instructed the ICC to consider three issues prior to preempting a State decision to deny discontinuance. At the State level, NYSDOT denied Greyhound's petition to abandon the routes at issue and in doing so based its decision on the criteria Congress set up in the Bus Act. The State regulatory action was taken only after considerable deliberation and public hearings. This was not the case when the ICC in its haste to completely deregulate the intercity bus industry completely disregarded the intent of Congress in reaching its decision.

NYSDOT respectfully recommends that Congress mandate that in discontinuance petitions, when the transportation is the last bus service available and the State Agency or local municipalities offer financial assistance which covers the carrier's variable cost shortfall, that the ICC be precluded from preempting a State's action to deny discontinuance.

GRANT OF INTRASTATE AUTHORITY

NYSDOT is in agreement with the provision in Title 49 Section 10922(c)(2)(A) which provides that the ICC may issue a certificate to provide regular-route transportation entirely within one State if a carrier had interstate authority on the effective date of the Bus Act unless the ICC finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and it would have a significant adverse effect on commuter bus service in the area in which the competing service would be performed.

Congressional concern for the preservation of existing commuter bus operations is also expressed in the NTP Title 49 Section 10101(a)(2)(F) [i.e., "Provide and maintain commuter bus operations".]

Unfortunately for New York State and for many other States, Congess did not explicitly reiterate this provision for the issuance of intrastate authority on interstate routes which are granted by the ICC after the effective date of the Bus Act. Instead, Congress mandates that such authority be granted unless the ICC finds, that the transportation to be authorized is not consistent with the public interest [Title 49 Section 10922(c)(2)(B)].

NYSDOT comes before this Committee with the assertion that it is not consistent with the public interest to jeopardize existing commuter services that have not only been established within the framework of State law, but services that are substantially funded by the State through operating subsidies. NYSDOT believes that regardless of when the authority is granted [whether before effective date of the Bus Act or after its effective date], the impact of ICC grants of intrastate authority on commuter bus operations must be carefully weighed and seriously considered.

The current situation in New York, especially in the New York City Metropolitan Area, is becoming more critical each day because of the wholesale grants of intrastate authority by the ICC which allows carriers not only to pick and choose which intrastate points they wish to serve but also pick and choose at which times that service will be provided. This creates a chaotic situation in a commuter market where ICC carriers can opt to only serve lucrative intrastate commuter markets at prime times. After the cream has been skimmed from a particular market, it leaves the incumbent State regulated carrier with the less profitable non-peak traffic. This can put a well-balanced existing transportation network on the brink of disaster.

As previously noted, New York State has committed itself to mass transportation and has backed this commitment up with substantial financial resources. Fare box revenues, in those metropolitan areas that are presently being served by NYSDOT authorized private and public operators, continue to decline because the newly authorized ICC carriers performing intrastate services are skimming the cream traffic from those systems. Consequently, New York's financial obligation for subsidy continues to grow. For example, in 1982, $484 million was appropriated for mass transportation. In 1983, financial assistance climbed to $659 million, and to $715 million in both 1984 and 1985. Obviously, the State's financial commitment to mass transportation cannot continue to grow at this pace. The only available alternative will be to increase fares or to reduce service and thus eventually erode and destroy the basic commuter transportation system.

Attached as Appendix II is just a small sampling of ICC grants of intrastate authority that have directly impacted commuter services.

RECOMMENDATIONS ON GRANT OF INTRASTATE AUTHORITY

If Congressional intent is concerned with the preservation of existing commuter bus services, then NYSDOT asks this Committee to take the necessary actions to prohibit the ICC from disrupting those services.

NYSDOT advocates that the Committee seriously consider an amendment to the Bus Act that would preclude the ICC from granting intrastate authority within a zone that is in close proximity to a municipality. This would leave the administration and regulation of commuter transportation to the exclusive jurisdiction of the

State and local governments. For example, a basic standard that could be implemented would be to impose a population-mileage formula such as shown below:

Population of base Municipality:	*Mileage*[1]
Between 25,000 and 99,999	10
Between 100,000 and 499,999	25
500,000 and over	50

[1] Measured from corporate limits.

By the use of a zone concept similar to the above, the ICC could still grant corresponding intrastate authority to an interstate carrier to provide true intercity service without severely impacting on the State's responsibility to provide commuter services to its constituents. To cite some concrete examples:

1. The above formula would still allow the ICC to grant authority to carriers to serve between Westchester County in New York and New Jersey or to serve between Long Island and New Jersey in interstate commerce. Those carriers, however, would be prohibited from picking up and discharging the same passenger in intrastate commerce within a 50 mile zone of New York City. The carrier could still however pick up or discharge a passenger within the 50 mile zone if that passenger was destined to cross the State line in interstate commerce.

2. The above formula would still allow the ICC to grant intrastate authority to an interstate carrier whose interstate route encompassed Buffalo (population 360,000) and Syracuse (population 190,000). The carrier would, however, be precluded from picking up and discharging the same passenger within a zone 25 miles from either the Buffalo or the Syracuse corporate limits. This would preserve the true commuter services in those markets.

In the above examples, an interstate carrier could still provide intrastate commuter service if it applied and obtained authority from the State regulatory agency. In this way the State could act in the best interests of its constituents by evaluating the current commuter service with the local municipality, analyzing the possible ramifications on the State operating subsidy program and then determine if it is in the best interests of the State and its riding public to authorize commute service by additional carriers.

In short, while NYSDOT agrees that ICC carriers should not be precluded from picking up and discharging within a State when those carriers perform an intercity service, it feels that the jurisdiction over the intrastate short haul commuter operations should remain with State and local jurisdictions where it can be administered within the context of an overall State transportation policy.

CONCLUSION

I applaud the efforts of this Committee in taking the time to see if the Bus Act is working as intended by Congress. In my opinion it is not. I believe that the Committee's work is extremely essential in stopping the ICC's total disregard for Congressional intent and the welfare of the riding public.

NYSDOT stands ready to assist this Committee in any way to reestablish the Bus Regulatory Reform Act of 1982 as a "Regulatory Reform" bill as intended by Congress and not deregulation of the bus industry and a complete disregard for the State and local interests as it has been administered by the ICC.

I respectfully request that the Committee take action to tighten up the provisions of the Bus Act as they pertain to intrastate service discontinuances and grants of intrastate operating authority.

Thank you for your consideration of the NYSDOT position.

United Transportation Union,
Cleveland, OH, November 1, 1985.

Hon. John C. Danforth,
Chairman, Surface Transportation Subcommittee, Senate Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: This will respond to your invitation asking for the views of the United Transportation Union in conjunction with the Committee's Third Annual Oversight Hearing on the Operation of the Bus Regulatory Reform Act.

For the record, I should like to state once again that the United Transportation Union is one of the largest and oldest of the transportation labor unions affiliated with the AFL-CIO, serving the major modes of transportation throughout the United States.

In the representation of a large percentage of the employees in the mass transportation industry in this country and in the over-the-road bus industry, we, as officers of the United Transportation Union in its bus division, have acquired over a long period of time a day-to-day, hour-to-hour working knowledge of the operational and financial problems of the bus industry.

In our testimony in earlier oversight hearings over the past few years on the subject of bus deregulation, we have said and we say once again that the Act has largely failed in its purpose of strengthening the bus industry. On the contrary, it has served along with the other transportation deregulation measures to unsettle the balance contemplated by the National Transportation Policy and to profoundly disturb the established transportation modes. Its overall effect appears to have been to stimulate a trend toward disintegration in the bus industry.

We simply will reaffirm our testimony before the Committee in its hearings last year. We will say once again that to the best of our knowledge the Interstate Commerce Commission has been moving and is continuing to move in the direction of eliminating rather than reforming regulations.

We said then and we repeat that the ICC has all but removed the entry door. It has been granting applications for regular route service by any applicant without concern for destructive competition, substandard wages or safety, so long as the insurance requirements are satisfied. We cited one notable experience with a substandard carrier which eventually withdrew its application for regular route service at the Court of Appeals review level and ceased doing business. Apparently it was too weak to continue.

We pointed out at the time that competition from cut-rate applicants such as the one mentioned, joined by numerous others, is patently destructive of stability of the bus industry, and of employment standards, safety and jobs. In the interval since the last oversight review, we have seen hard evidence of the devastating impact of deregulation as interpreted and applied by the ICC.

Service in rural areas, providing a lifeline to towns across the country, has been abandoned. Contrary to the expectations of the proponents of deregulation, major bus companies have eliminated these routes and the new, smaller bus companies have failed to fill the gap.

It is apparent to us that deregulation has all but eliminated the concept of public service. Profit is the motive, to the exclusion of other traditional considerations which have characterized national and local transportation. Others have testified to the decline of Greyhound and Trailways, the two principal motorbus passenger carriers. Deregulation may well mean the end of the era in which two major carriers provided the principal means of transcontinental bus transportation. The proliferation of cut-rate, substandard bus companies and airlines is generally recognized as the cause of this decline.

This influx of cut-rate companies has created disturbing consequences for bus industry employees as well as passengers. Elimination of jobs, substandard conditions of employment, and the diminution of safety standards have become hallmarks of the low budget competition.

Some provisions were made in the Act for the protection of employees terminated as a result of deregulation. These protections have been ineffective, in large part because most employees have been furloughed rather than terminated and therefore are ineligible for participation in the system of preferences established by the Act. Modifications must be made in order to preserve the pool of experienced bus drivers available for employment.

Once again, we note that the Act has failed to serve its stated purpose of revitalizing the bus industry through expansion and improvement of bus service. A reexamination of the Act's procedures, particularly with respect to job protection standards, and of the role of the Interstate Commerce Commission is urgently needed.

We appreciate this opportunity to present our views. Thank you for your consideration.

Respectfully submitted,

KENNETH R. MOORE,
Vice President, Director, Bus Department.

U.S. General Accounting Office,
Washington, DC, November 7, 1985.

Hon. Bob Packwood,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate.

Dear Mr. Chairman: In a letter dated October 16, 1985, you asked for a written statement summarizing our findings to date on our review of DOD's interstate rate program for household goods shipments.

In a meeting with Ms. Karen Phillips of your staff on January 30, 1985, it was agreed that we would focus on two areas: (1) the program's impact on the moving industry and the government and (2) the program's impact on the quality of service. At that time, it was also agreed that a letter report would satisfy your Subcommittee's needs.

Our fieldwork has been completed, and we have prepared a draft report. We plan to issue this draft to DOD and industry associations for comment by November 22, 1985. Recipients will have 30 days in which to respond. After the comments have been received and reviewed, the report will be finalized. If the comments are minimal, it should be issued no later than January 15, 1986.

Briefly, our findings indicate that, to date, the program has not adversely affected the moving industry or the government. Also, the number and cost of claims has not increased significantly, which would indicate that the quality of service members receive has not been affected. However, since it could be several years before complete claims data is compiled, it may be too early to assess the impact the program will have on claims.

We hope this information satisfies your immediate needs. If you have any further questions, please contact Ed Balderson (275-4133) or Mike Simpson (692-4494) of my staff.

Sincerely yours,

Frank C. Conahan, *Director.*

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